

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LAND USE COMMISSION
STATE OF HAWAI'I

| HEARING AND ACTION | PAGE |
|---|------|
| Public Testimony for A87-610 |) |
| Adoption of Order A87-610 Tom Gentry and Gentry Pacific |) 7 |
| Continued Hearing & Action (if necessary) |) |
| A92-683 Halekua Development Corporation O'ahu |) 13 |

TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a Public Hearing at Leiopapa A Kamehameha Bldg. #205, 235 S. Beretania St, Honolulu, Hawai'i, Hawai'i, commencing at 9:05 a.m. on November 21, 2014, pursuant to Notice.

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter

A P P E A R A N C E S

COMMISSIONERS:

COMMISSIONER ACZON
COMMISSINER AHAKUELO
COMMISSIONER HIRANAGA
COMMISSIONER MAHI
CHAIRMAN McDONALD
COMMISSIONER SCHEUER
COMMISSIONER WONG

EXECUTIVE OFFICER: DAN ORODENKER

CHIEF CLERK: RILEY HAKODA
STAFF PLANNER: SCOTT DERRICKSON/BERT SARUWATARI
DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: HOTAI ZERBA

Docket No. A87-610 Tom Gentry and Gentry Pacific, Ltd.

For the Petitioner K.S.: JENNIFER LIM, Atty. at Law

For the DPP: RICHARD LEWALLEN, Deputy Corp. Counsel

For the Office of Planning: BRYAN YEE, ESQ.
RODNEY FUNAKOSHI,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

=====

Docket No. A92-683 Haleakala Development Corp. (O'ahu)

For the Petitioner: STEVEN LIM, ESQ.
ONAONA THONE, Associate
ANN BOUSLOG, Representative

For the County DPP: RICHARD LEWALLEN
Deputy Corporation Counsel
MIKE WATKINS

For the State: BRYAN YEE, ESQ.
Deputy Attorney General
RODNEY FUNAKOSHI
Office of Planning

For HRT Realty, LLC DELWYN WONG, ESQ.
300 Corporation
And Honolulu, Ltd.:

I N D E X

| | | |
|----|-------------------------------|----------|
| 1 | | |
| 2 | | |
| 3 | DOCKET WITNESSES | PAGE |
| 4 | JEFFREY OVERTON | |
| 5 | Direct Examination by Mr. Lim | 23 |
| 6 | JON WALLENSTROM | |
| 7 | Direct Examination by Mr. Lim | 51 |
| 8 | Redirect Exam by Mr. Lim | 153 |
| 9 | Recross Exam by Mr. Yee | 156 |
| 10 | LAURENCE GREENE | |
| 11 | Direct Examination by Mr. Lim | 69 |
| 12 | | |
| 13 | CLIFFORD SMITH | |
| 14 | Direct Examination by Mr. Lim | 85 |
| 15 | | |
| 16 | ROBERT SPEAR, PhD | |
| 17 | Direct Examination by Mr. Lim | 104 |
| 18 | | |
| 19 | ERIC GUINTHER | |
| 20 | Direct Examination by Mr. Lim | 108 |
| 21 | Cross-Examination by Mr. Yee | 109 |
| 22 | RODNEY FUNAKOSHI | |
| 23 | Direct Examination by Mr. Yee | 111, 113 |
| 24 | Cross-Examination by Mr. Lim | 124 |
| 25 | MIKE WATKINS | 133 |

I N D E X cont'd.

JOANNE NONI TOLEDO HEM

Direct Examination by Mr. Lim 144

RANDY TERUYA

Direct Examination by Mr. Yee 164

Cross-Examination by Mr. Lim 171

ALLEN ZOTAKI 183

1 CHAIR McDONALD: I'd like to call the Land
2 Use Commission meeting to order. Before we begin our
3 proceedings I'd like to establish the protocol for
4 this meeting for the benefit of the public. This
5 meeting will be conducted in accordance with Part 1 of
6 Chapter 92, Hawaii Revised Statutes, otherwise known
7 as the Sunshine Law.

8 The Sunshine Law allows the public access
9 to attend and observe our meeting and participate as
10 public witnesses on matters relevant to our agenda.
11 This access, however, does not allow for public
12 questions or interruptions during our proceedings.

13 If members of the audience have concerns
14 or questions regarding our proceedings, please direct
15 them to the LUC staff, primarily our chief clerk. The
16 chief clerk will field your issues in order to allow
17 our proceedings to continue without incident. The
18 chief clerk will then determine the gravity of their
19 issue and communicate with the Chair and/or Executive
20 Officer at the earliest opportune time.

21 It is my expectation as Chair, that all
22 members in attendance adhere to these procedures in
23 order that the Commission can devote its full
24 attention to the matters at hand and permit the
25 parties to engage in an efficient proceeding without

1 interference. Failure to adhere to this protocol and
2 its courtesies will result in the violator be found
3 out of order.

4 Per our administrative rules the presiding
5 officer or executive officer may remove any person who
6 willfully disrupts a meeting or hearing or other
7 proceeding before the Commission. Mahalo in advance.

8 Okay. This is an action meeting on Docket
9 No. A87-610 Tom Gentry, Gentry Pacific LTD. to approve
10 the form of the Order in this matter. Let me update
11 the record. On October 29, 2014 the Commission met in
12 Honolulu, Hawai'i and voted to grant the first part of
13 the Motion for Order Amending Findings of Fact,
14 Conclusions of Law and Decision and Order dated May
15 17, 1988 to 1. Recognize Kamehameha Schools as a
16 successor Petitioner with standing to seek and obtain
17 the relief requested by the motion.

18 And on November 13, 2014 the Commission
19 met in Honolulu, Hawai'i and voted to grant the second
20 part of the Motion for Order Amending Findings of
21 Fact, Conclusions of Law and Decision and Order dated
22 May 17, 1988. The second part: Issue an Order
23 modifying the Commission's Findings of Fact,
24 Conclusions of Law and Decision and Order dated May
25 17, 1988 as amended by the Commission's November 30th,

1 1999 Order Amending Condition No. 6 of the D&O dated
2 May 17, 1988 to expressly authorize the use of portion
3 of the KS property for solar farm development for a
4 period not to exceed 35 years.

5 Is there anyone in the audience wishing to
6 provide public testimony on this matter? Seeing none,
7 will the parties --

8 PUBLIC WITNESS: Mr. Purcell.
9 (approaching public witness chair)

10 CHAIR McDONALD: Please have a seat,
11 Mr. Purcell.

12 PUBLIC WITNESS: I'd like to commend the
13 Chair for making comments regarding the Sunshine Law.
14 It's a critically important part of public meetings,
15 something that you didn't necessarily adhere to last
16 time. And I want to bring your attention to the fact
17 that the public is entitled to comment on every,
18 single, agenda item. And at the end of your meeting
19 today you have an executive session and you didn't
20 list public comments before that. I do have public
21 comments before that.

22 So I don't want to have any disagreements
23 or threats either by the executive director yelling
24 over me and screaming at me. And I certainly don't
25 want any threats of having me removed from the

1 meeting. This is a public meeting. It's critically
2 important members of the public be here to keep you
3 honest. Mahalo.

4 CHAIR McDONALD: Thank you, Mr. Purcell.
5 Okay. Will the parties please identify themselves for
6 the record.

7 MS. LIM: Good morning, Commissioners.
8 Jennifer Lim representing successor Petitioner
9 Kamehameha Schools.

10 CHAIR McDONALD: Good morning, Ms. Lim.

11 MR. LEWALLEN: Good morning. Richard
12 Lewallen, deputy corporation counsel on behalf of the
13 Department of Planning and Permitting.

14 CHAIR McDONALD: Good morning.

15 MR. YEE: Good morning. Deputy Attorney
16 General Bryan Yee on behalf of the Office of Planning.
17 With me is Rodney Funakoshi from the Office of
18 Planning.

19 CHAIR McDONALD: Good morning, Mr. Yee.
20 Commissioners, before you is the form of the Order
21 granting the Petition filed in this Docket No. A87-610
22 on May 13, 2014. Are there any questions or comments
23 on the Order or discussion on the form of the Order?
24 Seeing none, the Chair will now entertain a motion to
25 approve.

1 COMMISSIONER WONG: So moved.

2 COMMISSIONER MAHI: Second.

3 CHAIR McDONALD: Motion by Commissioner
4 Wong, second by Commissioner Mahi. Any discussion?

5 COMMISSIONER WONG: Chair, I just wanted
6 to say this is a great cause because we need solar
7 for, you know, for renewable. And that this process
8 will help us in becoming self-sustainable in the near
9 future for the state of Hawai'i. Thank you.

10 CHAIR McDONALD: Thank you, Commissioner.
11 Commissioner Scheuer.

12 COMMISSIONER SCHEUER: Chair, just very
13 briefly. I appreciated the further clarification in
14 the findings of fact of the planning process that's
15 going to be employed by the Petitioner.

16 CHAIR McDONALD: Thank you, Commissioner.
17 Any further comments, discussion? Seeing none,
18 Mr. Orodener, can you please poll the Commission.

19 MR. ORODENER: Thank you, Mr. Char. The
20 Motion is to adopt the Order. Commissioner Wong?

21 COMMISSIONER WONG: Aye.

22 MR. ORODENER: Commissioner Mahi?

23 COMMISSIONER MAHI: Aye.

24 MR. ORODENER: Commissioner Scheuer?

25 COMMISSIONER SCHEUER: Aye.

1 MR. ORODENKER: Commissioner Aczon?

2 COMMISSIONER ACZON: Aye.

3 MR. ORODENKER: Commissioner Hiranaga?

4 COMMISSIONER HIRANAGA: Aye.

5 MR. ORODENKER: Commissioner Ahakuelo?

6 COMMISSIONER AHAKUELO: Aye.

7 MR. ORODENKER: Commissioner Song is
8 absent. Chair McDonald?

9 CHAIR McDONALD: Aye.

10 MR. ORODENKER: Mr. Chair, the motion
11 passes unanimously.

12 CHAIR McDONALD: Thank you, Mr. Orodenker.
13 And thank you to the parties. We'll take a 5-minute
14 recess in place in order to get situated for the next
15 agenda item. (recess)

16

17 --00--

18

19

20

21

22

23

24

25

1
2
3
4 CHAIR McDONALD: We're back on the record.
5 There is a continued hearing and action meeting to
6 consider Successor Petitioners Ho'ohana Solar 1, LLC's
7 motion for Order Bifurcating the Amended Findings of
8 Fact, Conclusions of Law and Decision and Order dated
9 October 1, 1996. And motion for Order Amending
10 Findings of Fact, Conclusions of Law and Decision and
11 Order dated October 1st, 1996.

12 Will the parties please identify
13 themselves for the record.

14 MR. LIM: Good morning, Mr. Chairman,
15 Members of the Commission, Steven Lim and my associate
16 Onaona Thoene, Ho'ohana Solar represented to my right.

17 MR. LEWALLEN: Good morning, Chair. Good
18 morning, Commission. I'm Richard Lewallen, deputy
19 corporation counsel for the city Department of
20 Planning and Permitting. To my right is Mike Watkins
21 of the Department. Thank you.

22 MR. DELWYN WONG: Good morning, Chair
23 Members of the Commission. My name is Del Wong on
24 behalf of HRT Realty, LLC and its affiliated companies
25 300 Corporation and Honolulu Ltd.

1 CHAIR McDONALD: Thank you.

2 MR. YEE: Good morning. Deputy Attorney
3 General Bryan Yee on behalf of the Office of Planning.
4 With me is Rodney Funakoshi from the Office of
5 Planning.

6 CHAIR McDONALD: Good morning. The
7 Commission met on this matter on November 12 and 13,
8 2014 but did not begin proceedings due to Petitioner's
9 request to continue proceedings until November 21st,
10 2014 to allow the parties to work together and seek
11 agreement on how to proceed. Okay.

12 Will the Petitioner please provide an
13 update regarding the progress made between the parties
14 after the November 12th and 13th meeting to ensure
15 that all parties participating have the most current
16 documents and information on this docket.

17 MR. LIM: Thank you, Mr. Chairman. Since
18 the last meeting on this Petition, the successor
19 Petitioner, Ho'ohana Solar who I'll call "Ho'ohana"
20 During this proceeding engaged in numerous discussions
21 with all parties, all six landowners with the
22 exception of any return from RKES which is the owner
23 of the preservation zoned school site within the
24 property.

25 That was the only owner that throughout

1 the proceedings where we've sent messages to them. We
2 gave them copies of the draft motions. We've served
3 them all the documents and we haven't received any
4 response back. So we're assuming they're taking no
5 position in this proceeding. All the other parties
6 have been participating actively over the last couple
7 of weeks.

8 I think that Mr. Yee has a statement to
9 make which may clear up some of the issues that you
10 heard at the last proceeding.

11 CHAIR McDONALD: Thank you. Let me
12 briefly describe our procedures for today on this
13 docket. First I'll call those individuals desiring to
14 provide public testimony to identify themselves. All
15 such individuals will be sworn in and called to our
16 witness box prior to their testimony.

17 After public testimony I'm going to allow
18 opening statements by each of the parties to provide
19 the Commission some update as to the discussions that
20 have proceeded in the past week. Thereafter we'll be
21 admitting exhibits and -- we'll be admitting exhibits
22 by any of the parties.

23 So with that, Mr. Lim, any opening
24 statement you'd like to provide other than what you
25 have just given us? Excuse me. Anybody in the public

1 wishing to provide public testimony on this matter?

2 Seeing none, Mr. Lim, thank you. If you have any
3 further opening statement to provide?

4 MR. LIM: Just briefly, Mr. Chairman. As
5 I indicated earlier we've been in numerous
6 discussions. We've had -- there's 6 separate property
7 owners within this Petition Area. Basically we have 4
8 major parties: The HRT entities were represented by
9 Mr. Delwyn Wong last time when you saw us at the last
10 hearing. Basically there are 3 parties in one. But I
11 think we're very close to reaching agreement.

12 I think with Mr. Yee's statements today to
13 you that will provide some comfort to the HRT
14 entities. We hope that we are now -- that now the
15 lasagna is ready to be put into the oven. (general
16 laughter) We thank you for your patience with us.

17 CHAIR McDONALD: Thank you, Mr. Lim.
18 County?

19 MR. LEWALLEN: The County has no
20 statements to make at this time, but we reserve its
21 right to address later on in the proceedings if we
22 may.

23 CHAIR McDONALD: Thank you, County.
24 Mr. Wong, any statement?

25 MR. WONG: I'd like to defer making a

1 statement until Mr. Yee's finished.

2 CHAIR McDONALD: Okay, Mr. Yee.

3 MR. YEE: Thank you. First of all, let me
4 just apologize that it took us quite so long to get
5 here. I completely understand that the Commission was
6 required to come in 2 days and we were unable to
7 present our cases to you. That's an enormous
8 inconvenience to a group of people who are
9 volunteering their time from obviously some very busy
10 days and successful careers.

11 We ask for sacrifice from you to appear at
12 all and it makes it worse, I know, when we ask you to
13 come and you show up and there's nothing to do. So I
14 want to apologize for that.

15 The Office of Planning believes that the
16 Motion to Amend should be approved subject to
17 conditions. The Office of Planning has a stipulation
18 or will soon be coming up with at formal stipulation
19 or agreement on those conditions. We believe that all
20 the parties -- the none of the other parties will have
21 an objection to those stipulations.

22 It's important, however, to clarify that
23 this has been a somewhat complicated procedural
24 process for a variety of reasons. It was originally
25 granted to Halekua Development. There was an Order to

1 Show Cause which is unusual in those cases. The
2 Office of Planning came and needed to file the Order
3 to Show Cause in order to convey some property to the
4 Department of Agriculture so that they could begin the
5 process of creating an agricultural park which, as
6 will be described to you, is very, very important to
7 the Department of Agriculture.

8 As part of the settlement of that Order to
9 Show Cause the Office of Planning entered into a
10 stipulation with HRT entities -- I'm just going to
11 refer to them as a group -- and that stipulation was
12 filed with you. Nothing in this proceeding will
13 affect that stipulation between OP and the HRT
14 entities. It was signed. We signed it. We abide by
15 it. Nothing in this changes that.

16 The Land Use Commission, of course,
17 entered its own Order. I believe it's the Order
18 granting the Office of Planning's Amended Motion to
19 Exempt HRT, Ltd. property from the Order to Show Cause
20 granted on February 26, 2003 pursuant to the
21 stipulation filed on December 30th, 2003.

22 And that Order was issued by the
23 Commission on February 23, 2004. That Order is the
24 Order. And again nothing in this proceeding affects
25 the validity of that Order. That's the Order. It

1 stands. If there's been any confusion we're certainly
2 sorry that there's been confusion. But nothing about
3 the stipulations that we're proposing, or the motion
4 before you, should affect that 2004, February 23rd,
5 2004 Order.

6 With that the Office of Planning, we
7 believe, we certainly are hopeful that we can get
8 either a stipulation or at least no objection from
9 the other parties. And we can proceed before you in a
10 very timely way while still obviously presenting to
11 you the reasons why this matter is important; why it's
12 important to do the solar farm; why it's a good idea
13 for this property; and why the Department of
14 Agriculture will be satisfied with the proposed
15 conditions to ensure that its agricultural park,
16 which was a part of original case, will be able to
17 proceed on a timely basis. With that I thank for
18 allowing me to make this opening statement.

19 CHAIR McDONALD: Thank you, Mr. Yee.
20 Mr. Wong. (Mr. Delwyn Wong)

21 MR. WONG: Yes, just briefly to reiterate
22 what Mr. 803 Waimanu had indicated. Just to give some
23 background as to why HRT has been very concerned that
24 there would be unexpected obligations that would arise
25 from these proceedings that would be placed on my

1 client.

2 We've been very concerned that these
3 proceedings might in some way affect or diminish the
4 conditions and the agreements that were agreed to in
5 the stipulation that Mr. Yee had indicated, as well as
6 the 2004 LUC Order. So our concerns have to do with
7 making sure that HRT gets the benefit of the bargain.

8 What had happened back in 2003 when OP
9 filed its Order to Show Cause, was Condition 19 having
10 to do with the conveyance of the Ag Park was in
11 violation. Herbert Horita company at the time was the
12 owner of the Petition Area. And he had -- he had not
13 fulfilled those obligations.

14 So when the Order to Show Cause was filed,
15 all of us were put under the gun to come up with a way
16 to resolve that default. And HRT stepped to the
17 plate. We acquired the Ag Park, 150 acres off land.
18 We purchased it from the Robinson Trust for a
19 consideration of \$5 million, and conveyed it to the
20 state, to the Department of Ag free. We didn't get
21 any monetary consideration from that.

22 What we did get was an agreement with OP
23 that our lands would not be declassified. And we
24 wanted to make sure that these proceedings do not in
25 any way disrupt that agreement.

1 CHAIR McDONALD: Thank you, Mr. Wong.
2 Mr. Lim, please describe the exhibits you wish to have
3 admitted into the report for your respective motions.

4 MR. LIM: Thank you, Mr. Chairman. We
5 have 3 procedural matters to take up before we go into
6 our presentation. And I guess maybe before I get to
7 the exhibits this will notify the Commission that the
8 Petitioner is hereby withdrawing its motion to
9 bifurcate that we have filed previously. And we will
10 be submitting a pleading today to the Commission
11 requesting that Motion to Bifurcate be withdrawn.

12 Secondly, the successor Petitioner
13 Ho'ohana has entered into a stipulation with the
14 Office of Planning and the Department of Planning and
15 Permitting on the admissibility of the Petitioner's
16 exhibits listed in our third List of Exhibits:
17 Exhibits 1 through and including 3, 4 (I) like India.
18 So we request that the Commission admit those exhibits
19 into the record at this time. Parties, any objection?

20 MR. LEWALLEN: No objection.

21 MR. WONG: No objection.

22 MR. YEE: No objection.

23 CHAIR McDONALD: Commissioners, any
24 objections? The exhibits are admitted.

25 MR. LIM: Thank you. Lastly on procedural

1 matters at Successor Petitioner Ho'ohana, Office of
2 Planning and DPP have a stipulation that's been
3 submitted to the Commission as to qualifications of
4 our 7 expert witnesses. Those are listed in our
5 Stipulation to Qualification of Expert Witnesses
6 that's going to be filed with the Commission. Filed
7 today. Filed on the 18th, excuse me. So we would ask
8 that the Commission accept the qualifications of our
9 successor Petitioner's expert witnesses to allow them
10 to testify as such.

11 CHAIR McDONALD: Any objections by the
12 parties?

13 MR. LEWALLEN: No objection.

14 MR. WONG: No objection.

15 MR. YEE: No objection.

16 CHAIR McDONALD: Commissioners, any
17 objection? Your witnesses are admitted.

18 MR. LIM: Thank you. Mr. Chair, would you
19 like to handle -- I think the only party that's filed
20 exhibits in this proceeding was the Office of Planning
21 in its second Amended List of Exhibits 1 through and
22 including 13. We have no objections to those
23 exhibits.

24 CHAIR McDONALD: Parties, any objection to
25 OP's list of exhibits?

1 MR. LEWALLEN: No objection.

2 MR. WONG: No objection.

3 CHAIR McDONALD: Do you concur, Mr. Yee?

4 MR. YEE: Yes. (Laughter).

5 CHAIR McDONALD: Commissioners, any
6 objection? The exhibits are admitted. (Pause).

7 County, any exhibits you wish to admit?

8 MR. LEWALLEN: No exhibits.

9 CHAIR McDONALD: Mr. Wong?

10 MR. WONG: No exhibits.

11 CHAIR McDONALD: Okay. Mr. Lim, can you
12 please proceed with your presentation. We just heard
13 that you are withdrawing your Motion for Order to
14 Bifurcate. Therefore we'll be proceeding on your
15 Motion to Amend the Findings of Facts, Conclusion of
16 Law and Decision and Order dated October 1st, 1996.

17 MR. LIM: That is correct. Thank you very
18 much, Mr. Chairman. We're going to proceed with the
19 order of witnesses in which we will be presenting
20 first our Group 70 consultant Jack Overton who will
21 provide a Project overview. This is an incrementally
22 developed Project out at Royal Kunia. So he'll
23 explain what that is and where Ho'Ohana fits into the
24 big picture.

25 We'll then follow up with our witnesses

1 from Ho'Ohana Solar, John Wallenstrom, and Larry Green
2 who will present the overview of why they're doing
3 what they're doing with respect to the HECO power
4 purchase agreements and those types of issues that
5 you've heard in the other proceeding.

6 Then we'll move on into our subject matter
7 consultants. And we have a traffic consultant that is
8 available by phone should you wish to cross-examine or
9 any of the parties wish to cross examine him.

10 Mr. Overton will cover that report in his
11 testimony. So without further adieu I'd like to
12 present our first witness and we start the direct
13 examination now.

14 CHAIR McDONALD: Thank you, Mr. Lim.

15 MR. LIM: What I'll do for each of the
16 witnesses is I will call out the Exhibit Nos. that are
17 relevant to that witness so you can track the written
18 testimony and their actual submittal of their resumé
19 and their report, if they have one.

20 CHAIR McDONALD: Morning.

21 JEFFREY OVERTON

22 being first duly sworn to tell the truth, was examined
23 and testified as follows:

24 THE WITNESS: Yes.

25 Please proceed, Mr. Lim.?

1 DIRECT EXAMINATION

2 BY MR. LIM:

3 Q Good morning, Jeff. Could you please
4 state your name and business address for the record.5 A Jeffrey H. Overton, Group 70
6 International, Inc., 925 Bethel Street, fifth floor
7 Honolulu, Hawai'i 96813.8 MR. LIM: For the Commission's information
9 Mr. Overton's resumé was filed as successor
10 Petitioner's Exhibit 23. And his written direct
11 testimony is Exhibit 34A. Mr. Overton has been
12 qualified as an expert pursuant to the prior
13 stipulation.14 Q Jeff, as we previously discussed could you
15 please give the Commission an overview of the Royal
16 Kunia Phase 2 Project? And where we are today with
17 respect to the Ho'ohana Solar Project. And please
18 identify the exhibits as you refer to them.19 A Very good. We have 2 exhibits here that
20 Petitioner's -- successor Petitioner's Exhibit 1 is a
21 tax map key. Just to locate where we are on here.
22 This is the Kunia Road in here and the existing first
23 increment of Royal Kunia Village park further to the
24 south. Highlighted in here in the brighter yellow is
25 the Petition Area that went through the series of

1 petitions.

2 Increment 3, parcel 52 is highlighted in
3 this golden rod with the connection along the
4 Plantation Road connection here to Kunia Road.

5 The next exhibit might be a little --
6 provide a little more clarity here again. Village
7 Park and the H-1 Freeway here to the south Kunia Road,
8 first increment of Royal Kunia. Then here's the
9 increments of Phase 2 of Royal Kunia.

10 Increment 1 fronts Kunia Road in this area
11 here and divided out. Increment 2 is the central
12 portion in here; Increment 3, which is parcel 52.
13 You'll hear it referred to is the subject Project Area
14 for the solar farm.

15 MS. ERICKSON: Could you please identify
16 that map for the Commission.

17 THE WITNESS: Thank you. That's successor
18 Petitioner No. 32.

19 Q (By Mr. Lim) Jeff, we've had discussions
20 with the various landowners within the Petition Area.
21 Could you point out for the Commission the land
22 holdings of the 4 major landowners in this area? For
23 purples of the HRT entities we'll be referring to
24 those as the HRT entities, as HRT, Ltd, 300
25 Corporation and Hawai'i, Ltd -- Honolulu Ltd. Excuse

1 me. Go ahead.

2 A Very good. Parcel 52, which is our
3 Project Area in here, is owned by Robinson Estate,
4 Robinson Kunia Land, LLC. RKL acronym.

5 HRT Realty, LLC is the owner of several
6 parcels in here: Parcel 1 on the TMK. map as we're
7 getting them -- sorry the orientation is a little
8 tricky -- it involves this piece in here, parcel 70,
9 and here's parcel 1 that extends up into this area
10 here.

11 Parcel 70 and parcel 78. This is
12 Exhibit 1 that I'm referring to. On this map, which
13 is a bit dated from the original files, I believe this
14 is from 96 on Exhibit 32. Increment 1 which is the --
15 extends over into here. The TMK Parcel 1, 70 and 78
16 are within this area here. Then this central portion
17 Increment 2 it shows on here Parcels 71 is owned by
18 CanPartners in they're kind of a successor to Horita.
19 There are, as was mentioned previously two other
20 landowners, 300 Corporation, Honolulu Limited, which
21 are a part of the parcel 1 ownership team. This
22 parcel 79 future school parcel is RKES, LLC. in there.

23 Q Jeff, in the 1996 Order by the Commission
24 there were 25 conditions imposed by the Commission.
25 Can you please update the Commission as to how those

1 conditions apply to the proposed solar farm on Parcel
2 52? And for the Commission's edification it's starts
3 on page 4 of his written direct testimony.

4 A Ye. The Commission imposed 25 conditions
5 of approval of the Petition Area. However, minimal
6 impacts of the proposed solar farm will not trigger
7 compliance with most of these conditions.

8 Condition 1 requires the Petitioner to
9 provide affordable housing because the proposed solar
10 farm will not include the construction of any
11 residential units. This condition is not applicable
12 at this time.

13 Conditions 2, 3 and 4 require the
14 Petitioner to fund, design and construct its pro rata
15 share of local and regional transportation
16 improvements driven by the proposed development of
17 Royal Kunia Phase 2, to appoint a transportation
18 manager, a monitor the traffic applicable to Phase 2
19 Project. Because of the proposed solar farm will have
20 only negligible traffic impacts, these conditions are
21 not applicable at this time.

22 Condition 5 requires the Petitioner to
23 work with the City and County of Honolulu, Department
24 of Public Works and the State Department of Health,
25 DOH, to conform to the program goals of the Integrated

1 Solid Waste Management Act. Because the proposed
2 solar farm will not require a solid waste management
3 condition this condition is not applicable at this
4 time.

5 Condition 6 requires the Petitioner to
6 contribute its pro rata share to fund, develop and/or
7 construct school facilities. Because the proposed use
8 does *not* include the construction of any residential
9 units which cause the demand for school facilities,
10 this condition is not applicable at this time.

11 Condition 7 requires coordination with the
12 Board of Water Supply and DLNR to obtain the required
13 water for the Project or, if sufficient water is not
14 available, requiring the Petitioner to fund and
15 develop its own source, transmission and storage
16 facilities.

17 As will be discussed Ho'ohana will truck
18 water onto parcel 52 and store the water in three
19 40,000-gallon water tanks. So this condition is not
20 applicable at this time.

21 Condition 8 requires the Petitioner to
22 fund its pro rata share of civil defense measures.
23 Because the proposed use does not include the
24 construction of any residential units, this condition
25 is not applicable at this time.

1 Condition Nos. 9 and 10 require the
2 Petitioner to erect chain-link fence along the eastern
3 boundary of the Petition Area. And to maintain the
4 area within 20 feet of the eastern boundary free of
5 vegetation taller than 8 inches high.

6 Conditions 9 and 10 were imposed on the
7 original 1993 D&O as a safety measure and a buffer for
8 the proposed residential units from the former Waikele
9 branch of Naval Magazine Lualualei.

10 Subsequently the Department of the Navy
11 communication dated January 24, 1996 stated that all
12 explosives have been removed from Waikele Branch
13 Facilities and no need exists for any future storage
14 of explosives. This location is dis-established as an
15 ordinance storage location.

16 Therefore, Conditions 9 and 10 should no
17 longer be able to the Royal Kunia Phase 2 Project
18 including the subject parcel 52. In any event, for
19 security reasons Ho'ohana will erect an 8-foot tall
20 fence around the 124-acre perimeter of the proposed
21 solar farm. Vegetative buffers will be planted where
22 needed as required by the conditional use permit, CUP.

23 Condition 11 requires the Petitioner to
24 coordinate with the Department of Health, DOH, and the
25 county to establish a system to prevent and contain

1 spill of chemicals. No hazardous chemical will be
2 used as part of the proposed solar farm. So this
3 condition is not applicable at this time.

4 Condition 12 requires the Petitioner to
5 fund and construct adequate wastewater treatment
6 transmission and disposal facilities. Because no
7 residential units will be constructed as part of the
8 proposed use the condition is not applicable at this
9 time.

10 The security watchman residents will,
11 however, be equipped with a septic system.

12 Condition 13 requires Petitioner to
13 implement effective soil erosion and dust control
14 measures both during and after construction. To the
15 extent applicable Ho'ohana will use Best Management
16 Practices to control dust and erosion during
17 construction of the proposed solar farm.

18 Erosion and dust will be minimal after
19 construction of the solar farm is completed and during
20 operation of the solar farm.

21 Condition 14 requires the Petitioner to
22 participate in an air quality monitoring program.
23 There will be no emissions from the proposed solar
24 farm and the operation phase of the solar farm will
25 produce only minimal vehicle trips and associated

1 emissions. So this condition is not applicable at
2 this time.

3 Condition 15 requires the Petitioner to
4 notify owners and occupants within the Petition Area
5 of the potential odor and other nuisances caused by
6 surrounding agricultural activities. Because there
7 will be no construction of residential units as part
8 of this Project this condition is not applicable at
9 this time.

10 Condition No. 16 requires Petitioner to
11 provide drainage improvements. The Project is located
12 outside of any flood plain or drainage areas.
13 Ho'Ohana will comply with all applicable drainage
14 requirements of the City.

15 Condition 17 requires Petitioner to cease
16 construction if any archaeological resources are
17 discovered on the property. Parcel 52 has been farmed
18 for over a century. Ho'ohana has performed a full
19 Archaeological Inventory Survey as part of its Project
20 studies, and will comply with this condition and
21 coordinate with State Historic Preservation Division,
22 SHPD should any archaeological resources be found
23 during construction of the proposed solar farm.

24 Condition 18 requires Petitioner to obtain
25 development plan approvals within 5 years from the

1 date of the 1996 Order. According to the status
2 record dated January 14, 2014 submitted to the
3 Commission by Halekua Kunia, LLC. Halekua obtained
4 all development plan approvals for Royal Kunia Phase
5 2. Therefore this condition has been fully satisfied.

6 Condition 19 requires Petitioner to
7 convey lands to the state of Hawai'i and provide
8 certain offsite infrastructure to the state
9 agricultural park.

10 In 2004 title to 150 acres of land, now
11 identified by TMK No. 9-4-2-80 -- I'll indicate here
12 on the TMK -- here's parcel 80 on the map -- was
13 transferred to the -- that was Petitioner's
14 Exhibit 1 -- was transferred to the state of Hawai'i
15 for use as the state agricultural park. Therefore
16 this condition has been partially satisfied.

17 Condition No. 19 it is applicable to
18 parcel 52 because it is part of the Petition Area.
19 However, Condition No. 19 has always been governed,
20 according to the terms of the Memorandum of
21 Understanding, MOU, and RKL, has never been party to
22 the MOU.

23 Condition No. 20 requires Petitioner to
24 develop the property in substantial compliance with
25 the representations made to the Commission. This

1 condition remains applicable and this Motion to Amend
2 seeks the Commission's approval that the proposed
3 interim solar farm on parcel 52 is *in* substantial
4 compliance with the representations made by the
5 Petitioner in this docket.

6 Condition No. 21 requires the Commission's
7 prior approval before the Petitioner can change the
8 ownership interest in the Petition Area. This Motion
9 to Amend seeks to modify this condition to require
10 only notice to the Commission of the Petition Area
11 landowners' intent to change the ownership interest.
12 As part of its response to successor Petitioners
13 motion to amend OP has no objection to the proposed
14 amendment of this Condition No. 21. And such language
15 is consistent with the standard conditions imposed by
16 the Commission.

17 Now, condition No. 22 requires the
18 Petitioner to provide annual status reports to the
19 Commission.

20 Condition No. 23 provides that any
21 conditions imposed by the Commission may be fully or
22 partially released by the Commission upon a Motion for
23 Release.

24 Conditions No. 24 and 25 require
25 Petitioner to record the conditions imposed by the

1 Commission with the Bureau of Conveyances. To date
2 these conditions have been fully met and will continue
3 to be met, should any additional conditions of
4 approval imposed by the Commission.

5 Q Thank you Jeff for that extensive
6 discussion of the Commission's conditions. Did the
7 Commission's 1996 Order impose a deadline for
8 completion of the residential development of Increment
9 3 on parcel 52?

10 A No. There's no completion deadline, but
11 the former Petitioner's estimated deadline for the
12 Royal Kunia Phase 2 buildout has already passed.

13 Q But for the Commission's information we
14 have other questions and answers detailed in
15 Mr. Overton's overall testimony which will be handled
16 specifically by our other witnesses. So I'm going to
17 skip over some of those and move out to page 13.

18 Mr. Overton, have you made appropriate
19 assessments of the effects of the Project to assume
20 there are reasonable measures to protect the public
21 trust and resources?

22 A Yes. Based on our studies there will be
23 no adverse impacts from development of the solar farm
24 to the public trust resources at parcel 52.

25 Q Would there be any significant use of

1 groundwater or surface water by the solar farm?

2 A No. There will be no significant use of
3 groundwater or surface water by the solar farm
4 Project. And that's no impairment to the public trust
5 relating to water resources. The Project does not
6 require approval by the Water Commission, nor does it
7 require water allocation. As discussed water for the
8 solar farm Project will be trucked onto parcel 52 and
9 will be used to clean the solar panels uses and for
10 landscaping purposes.

11 Q You're familiar with the analysis required
12 by the Ka Pa`akai O Ka `Aina vs. Land Use Commission
13 case, aren't you?

14 A Yes.

15 Q In light of that analysis, do you feel if
16 the studies you've done for the Project Area are
17 sufficiently detailed to identify the cultural,
18 historical and archaeological resources in the Project
19 Area?

20 A Yes, they are.

21 Q Were any burials or cultural resources
22 identified in the Project Area?

23 A No.

24 Q Okay. So in your professional opinion
25 will the Project adversely effect any cultural,

1 historical or natural resources in the Project Area?

2 A No.

3 Q Was an Environmental Assessment prepared
4 for the proposed solar Project?

5 A No. It did not qualify for any of the 9
6 triggers under the state law.

7 Q How are the socio-economic effects of the
8 proposed solar farm Project different from what would
9 have been provided by the development of Royal Kunia
10 Phase 2, Increment 3, the residential Project?

11 A These benefits are different than the
12 benefits which will eventually be provided by the
13 Royal Kunia Phase 2 Project. The housing units and
14 jobs projected to be generated by the Royal Kunia
15 Project Phase 2 will not be lost if the Commission
16 approves this proposed interim solar farm, only
17 delayed.

18 As we discussed increment 3 cannot
19 feasibly be developed until Increments 1 and 2 are
20 constructed at Royal Kunia Phase 2 because increment
21 3, parcel 52, needs to connect to the infrastructure
22 developed by these increments.

23 Q Could you show the Commission on the
24 exhibit and identify the exhibit as to what you mean
25 by that?

1 A Okay. Referring to successor Petitioner's
2 Exhibit 32 Increment 1 as described previously
3 Increment 2. So the way the infrastructure will be
4 developed is roadway access along with sewer, water,
5 drainage, electrical to tie in and serve increment 3
6 for future residential developments it will be wholly
7 developed -- ah, dependent upon the buildout of these
8 earlier phases.

9 Q To wrap up. In your professional opinion
10 as a land use planner is the proposed solar farm on
11 parcel 52 consistent with the relevant provisions with
12 the Hawai'i State Plan, Land Use Laws of HRS Chapter
13 205, the city's Central O'ahu Sustainable Communities
14 Plan and the Commission's Rules and its Decision and
15 Order in this docket.

16 A Yes. The proposed solar farm Project is
17 an interim use of Parcel 52, which is consistent with
18 all of those land use criteria. The solar farm
19 Project will preserve future development of Parcel 52
20 for the residential units proposed as Royal Kunia
21 Phase 2 increment 3.

22 Q As I said earlier, Mr. Chair, we have
23 other witnesses who will be testifying to the specific
24 areas that he's generally covered. So you can ask him
25 the question, but he may defer to the other witnesses

1 on certain areas. With that we have no further
2 questions of Mr. Overton.

3 CHAIR McDONALD: Thank you, Mr. Lim.
4 County, any cross?

5 MR. LEWALLEN: No. No thank you, Chair.

6 CHAIR McDONALD: Mr. Wong?

7 MR. WONG: None for HRT.

8 CHAIR McDONALD: Mr. Yee.

9 MR. YEE: Thank you.

10 CROSS-EXAMINATION

11 BY MR. YEE:

12 Q Mr. Overton, I know you said -- let's
13 backtrack a step. You went through the conditions and
14 you found that a number of the conditions are not
15 applicable to this particular use of the property,
16 correct?

17 A Correct.

18 Q And would it be fair to say that's because
19 the conditions were created with the anticipation that
20 residential was going to be the use on the Petition
21 Area?

22 A Yes.

23 Q So with the change in use the old
24 conditions, many of the old conditions simply don't
25 apply, is that right?

1 A That's correct.

2 Q So with the new use then we need to look
3 for other conditions, or to see whether or not other
4 conditions should then apply to the new use, is that
5 right?

6 A That's what we're here to discuss.

7 Q That's right. Was it your understanding
8 the Office of Planning and Ho'ohana have come to an
9 agreement on what those new conditions should be?

10 A That's *my* understanding.

11 Q The initial decision took 503 acres out of
12 the Agricultural District into the Urban District, is
13 that right?

14 A Yes.

15 Q I know you talked about Condition 19.
16 This is true of the entire Petition Area, right? They
17 were all agricultural lands and they got moved into
18 the Urban District. Is that right?

19 A Yes.

20 Q And parcel 52 was this primarily A lands?

21 A Prior to reclassification?

22 Q Well, I don't think anyone's changed the
23 classification, but...

24 A It's no longer rated under the Land Study
25 Bureau.

1 Q Has the Land Study Bureau ever changed the
2 classification?

3 A Not that I'm aware.

4 Q So the Land Study Bureau set the
5 classification and has never changed it, is that
6 right.

7 A Again, it's going to be based on the soil
8 types that are out there. So it's good agricultural
9 soil. Whether it's B. or A. I don't know because it's
10 not mapped that way.

11 Q Do you remember -- have you ever looked at
12 the discussion whether or not it was possible to put a
13 special permit onto parcel 52 for solar farm?

14 A I've not looked into that.

15 Q So you're not aware that it's not
16 available to them because it's A lands?

17 A That's a double negative.

18 Q Yeah. Are you aware a Special Permit is
19 not going to work because a Special Permit is not
20 allowed for A lands?

21 A In this case a Special Use Permit is not
22 required for solar farm development. It's just a
23 conditional use permit from the county.

24 Q I'll just move on. But you're aware that
25 there are A. lands in the Petition Area.

1 A Not within the Petition Area.

2 Q Let's go back to an issue of semantics.

3 The Land Study Bureau classified the various soils in
4 the state, correct?

5 A Yes.

6 Q And they classified the soils on this
7 property didn't they?

8 A I'd have to go back and look at the '93
9 Petition records.

10 Q You're just not aware.

11 A I don't know what the ratings were prior
12 to its reclassification.

13 Q The 2006 Order, Condition 19 basically
14 said that the 1993 MOU should be complied with, is
15 that right?

16 A Yes.

17 Q And it didn't say only the signatories to
18 the MOU should be complied with. It just said the MOU
19 should be complied with, right?

20 A That's what I understand.

21 Q So violation of the MOU would be a
22 violation of the Decision and Order, wouldn't it?

23 A I want to be sure what I'm answering in
24 terms of your question.

25 MR. LIM: Chair, I have an objection to

1 the extent that he's asking for a legal conclusion of
2 Mr. Overton.

3 MR. YEE: Mr. Overton is an expert in this
4 field who frequently deals with Land Use Commission
5 decision. If he doesn't know the answer he certainly
6 can say so. But I think he's testified on what
7 conditions are or are not applicable to this property.
8 So he must have *some* type of understanding about
9 decisions and order as the conditions.

10 CHAIR McDONALD: I'm going to overrule
11 that. Mr. Overton, do you know the answer? Please
12 answer if not.

13 THE WITNESS: So we're talking about the
14 MOU regarding the conveyance of the agricultural park
15 to the state. And the related provisions follow
16 through on that.

17 Q (MR. YEE) And the provisions regarding the
18 creation of the infrastructure?

19 A Correct.

20 Q Okay. Yes. So the MOU was about the
21 conveyance and creation of the infrastructure. That's
22 the 1993 MOU, right?

23 A Correct.

24 Q So that's the MOU I'm talking about.

25 A And now you're asking who is this

1 applicable to?

2 Q No. I'm asking: Is the violation of the
3 MOU a violation of Condition 19?

4 A It would seem that way to me.

5 Q And a violation of Condition 19 would then
6 be a violation of the LUC's Decision and Order,
7 correct?

8 MR. LIM: If you know.

9 THE WITNESS: I'm not fully versed on
10 exactly what's happened with regard to Condition 19.
11 I know that there have been compliance reports filed
12 by CanPartners. I'm not aware of what Robinson has
13 done with regard to Condition 19.

14 Q I'm not asking whether Condition 19 has or
15 hasn't been violated. I'm only asking you if
16 Condition 19 is violated wouldn't that be a violation
17 of the LUC Decision and Order?

18 A It seems that way.

19 Q Condition 19 in the LUC's Decision and
20 Order runs when the lands correct.

21 A Yes.

22 Q So that Condition 19 and the LUC's
23 Decision and Order applies regardless of any change in
24 ownership to the land, correct?

25 A Yes.

1 MR. YEE: Thank you. Nothing further.

2 CHAIR McDONALD: Mr. Lim, any redirect?

3 MR. LIM: No redirect.

4 CHAIR McDONALD: Commissioners, any
5 questions of Mr. Overton? Commissioner Scheuer.

6 COMMISSIONER SCHEUER: I have a few
7 questions but I want to start off with one about
8 water. Was this area ever issued a water use permit
9 under the Waiahole Decision?

10 THE WITNESS: I don't really know. I know
11 there's irrigation water in the area that's related to
12 the ditch, but I don't know the specifics.

13 COMMISSIONER SCHEUER: So going to the
14 impact on public trust resources, it would be good to
15 know if water was allocated in the Waiahole Decision.
16 If water was allocated and now there's no plans to use
17 water from the Waiahole Ditch on this parcel, there
18 should actually be a communication with the Water
19 Commission.

20 THE WITNESS: That decision occurred after
21 the reclassification. That's my understanding.

22 COMMISSIONER SCHEUER: Correct.

23 THE WITNESS: So it was already in the
24 state Urban District. I just don't know. Answering
25 your earlier question whether there was some

1 allocation made with this property.

2 COMMISSIONER SCHEUER: The point I'm
3 trying to make is I think if there was water allocated
4 to that, which I do not know, it is adjacent to lands
5 that were allocated, at least petitioned for water in
6 Waiahole. If you're not planning to use that water
7 would actually be a positive impact on public trust
8 resources. That should be included in the part of
9 that analysis.

10 CHAIR McDONALD: Commissioner Scheuer, is
11 that it?

12 COMMISSIONER SCHEUER: For now.

13 CHAIR McDONALD: Commissioner Wong.

14 COMMISSIONER WONG: I guess I have a
15 question on this. Going back to Mr. Yee's question or
16 line of questioning. So all the conditions related to
17 this land follows the land, correct?

18 THE WITNESS: Yes.

19 COMMISSIONER WONG: So who is ultimately
20 responsible for filing this condition? It would be
21 Ho'ohana or would it be Robinson?

22 THE WITNESS: I believe it's Robinson as
23 the fee holder.

24 COMMISSIONER WONG: So Robinson.

25 THE WITNESS: I may be wrong but that's my

1 understanding.

2 COMMISSIONER WONG: The other question I
3 have, then, is -- jumping around -- on the
4 archaeological resources and anything, significant
5 resources -- was SHPD ever informed or was brought in
6 about this?

7 THE WITNESS: Yes. There was a much
8 earlier archaeological study that was done for the
9 initial Petition and the EIS for that, which had no
10 findings of significance. And it what cleared at that
11 time. We conducted our own Archaeological Inventory
12 Survey for parcel 52 just to give it an updated
13 thorough, meet the rigor of today's standards.

14 Again the Robert Spear is here as a
15 supplemental witness from SES who conducted the study.
16 The findings -- there were 2 sites. One was not
17 significant enough to receive a state site. And the
18 other did get a number, had to do with historical
19 roadway alignment. The details are in the testimony
20 there.

21 Also there has been correspondence with
22 SHPD. They reviewed the draft AIS. There were
23 comments which dealt more with the military history of
24 the property and surrounding. So a supplemental
25 report as filed. We're still waiting the final

1 clearance, but there were no comments of significance
2 regarding archaeological features on the property.
3 This was more of a, I'd say, housekeeping set of
4 comments to finalize the report.

5 COMMISSIONER WONG: Do you know if there's
6 any encumbrance in terms of Hawaiian encumbrance in
7 terms of people going onsite at this time?

8 THE WITNESS: No. That's another area
9 that we did some followup. We did not conduct a
10 cultural impact assessment because it's not a
11 requirement in here. But we did, Bob Spear did have
12 contact with Shad Kane who has history and
13 understanding of traditional use of the property.

14 And their discussion indicated that there
15 was no significant prior or current use for
16 traditional gathering access, worship on those
17 properties.

18 COMMISSIONER WONG: Thank you.

19 CHAIR McDONALD: Anything further,
20 Commissioners? Thank you, Mr. Overton, for your
21 testimony. We're going to take a 5-minute recess.
22 (10:10 recess).

23 CHAIR McDONALD: We're back on the record.
24 Mr. Lim, your next witness, please.

25 MR. LIM: Mr. Chairman, before we get to

1 that I had a tie-up matter for the last witness. We
2 had a traffic expert, Mr. Zora Rashid. (phonetic)
3 That's our Exhibit 34-G with his written testimony.
4 I'll represent to you that his study showed that there
5 would be no significant traffic impacts. He made some
6 recommendations for mitigation that would be for
7 during the temporary standard construction issues that
8 he's mentioned in his report on page 4.

9 We had him on call on a tele-con from
10 California. So we'd ask if the Commission had --
11 Commission or the parties had any questions on the
12 traffic issue. And if not then we'd go ahead and
13 release Mr. Overton Mr. Rashid.

14 CHAIR McDONALD: Mr. Lim, for the sake of
15 the Commission could you just reiterate the mitigation
16 measures that were proposed by your traffic
17 consultant.

18 MR. LIM: Sure. I'll summarize his
19 testimony, which is Exhibit 34G. Effectively what he
20 did was conduct a traffic assessment of the area. He
21 conservatively used a hundred construction workers
22 during the construction period. We've actually
23 projected only approximately 50 construction workers.
24 He found that the Project will not adversely impact
25 the traffic in the Royal Kunia area as the proposed

1 solar use is a low-impact use of the property.

2 His mitigation measures recommended at
3 Page 7 of his assessment, which is the Petitioner's
4 Exhibit 19. And at Page 4 of his written testimony
5 we've summarized those. And there are four.

6 1. Install temporary standard construction
7 signage on Kunia Road mauka-bound between Ananui
8 Street and Plantation Road that indicates the presence
9 of construction vehicles entering and exiting the
10 driveway.

11 2. Install temporary standard
12 construction signage on Kunia Road makai-bound between
13 the Hawai'i Country Club and Plantation Road that
14 indicates the same, the construction traffic.

15 No. 3. Verify the available sight
16 distance and maintain the adequate sight distance for
17 drivers existing Plantation Road turning out onto
18 Kunia Road. Maintenance may include such things as
19 pruning vegetation, things that might block the
20 driver's field of vision at the intersection.

21 And, lastly, he recommends extending the
22 painted solid line, delineating the no-passing zone
23 for Kunia Road, for mauka-bound vehicles at least an
24 additional 500 feet in the makai direction.

25 The conclusion is that once these

1 temporary mitigation measures during the construction
2 period are implemented, that that should handle the
3 construction traffic. And he concludes that once the
4 Project is fully operational there's no permanent
5 traffic improvements required or recommended.

6 CHAIR McDONALD: Thank you, Mr. Lim. I
7 guess, parties, any further clarifications from the
8 traffic consultant?

9 MR. YEE: OP has no questions.

10 MR. WONG: None for HRT.

11 MR. LEWALLEN: No questions.

12 CHAIR McDONALD: Commissioners, any
13 questions for the traffic consultant?

14 COMMISSIONER WONG: Just one question. So
15 would the Petitioner follow these recommendations?

16 MR. LIM: That's correct. It's a State
17 Department of Transportation roadway, so we'll be
18 following the required recommendations from the State
19 DOT.

20 COMMISSIONER WONG: Thank you.

21 CHAIR McDONALD: Thank you, Mr. Lim. Call
22 your next witness.

23 MR. LIM: Thank you very much. We'll
24 release our traffic report and also Mr. Overton. Our
25 next witness is Mr. Jon Wallenstrom.

1 CHAIR McDONALD: Good morning, Mr.
2 Wallenstrom.

3 THE WITNESS: Good morning.

4 JON WALLENSTROM

5 being first duly sworn to tell the truth, was examined
6 and testified as follows:

7 THE WITNESS: I do.

8 CHAIR McDONALD: Thank you.

9 MR. LIM: Mr. Wallenstrom has been
10 qualified as an expert witness. And his resumé was
11 filed as Petitioner's No. 26. His written direct
12 testimony is Exhibit 34D. Mr. Wallenstrom has been
13 qualified as an expert in Project development and
14 development finance.

15 DIRECT EXAMINATION

16 BY MR. LIM:

17 Q Jon, please explain to the Commission your
18 experience in Hawai'i development and move into the
19 development of the solar farm on parcel 53.

20 A Sure. Happy to. So Forest City. And
21 arrived in Hawai'i about a decade ago. And I've been
22 here 8 years. In those 8 years we have developed
23 about \$2 billion worth of development. Which
24 includes -- that's in the state of Hawai'i -- includes
25 military housing where we've done 6,000, we own in

1 partnership with the federal government 6,500 homes.
2 Have renovated, built, done just about everything
3 imaginable on those homes including, quite, frankly,
4 we're involved right now in about a 20 -- actually
5 it's about a 30-megawatt solar installation on our
6 rooftops.

7 Forest City outside of the military is
8 doing a large development in Kona called Kamakana
9 Villages. That's a workforce housing project being
10 developed in concert with HHFDC. That is proceeding
11 in that Kona market, providing workforce housing
12 important to that area.

13 We're currently under construction on a
14 499-unit apartment project in Kapolei. That's about
15 a \$140 million apartment, first apartment being built
16 in the state. So another important project. We're
17 hoping to implement solar on the roof of tha as well.
18 and we were very early entrants into the Hawai'i solar
19 market here.

20 We've completed, finished, operate 6 solar
21 farms. As we have proceeded and kind of interestingly
22 as we proceeded Forest City has at certain times have
23 the largest PV farm in the state. So we have built
24 things that just as recently as 3 or 4 years ago.
25 We're the largest. They're 12 megawatts. So we have

1 a lot of experience in the field but we're happy to be
2 working with Hanwha's. We need to work on this larger
3 project with Hanwha's Q Solar.

4 Q So that kind of segues into the formation
5 of Ho'ohana Solar 1, LLC. How and why did that
6 happen?

7 A As Forest City was looking to expand our
8 business here in the state with significant solar
9 experience, we looked for lands that we thought would
10 be appropriate. Began speaking with the Robinson
11 Trust about 2 years ago, and started to work on that
12 Project for a solar farm, based on location, ability
13 to interconnect to the grid, et cetera. It's a very
14 good site.

15 We continue down the road. And as we were
16 going having developed a lot but not at this scale,
17 began working with HECO. We're very much advanced,
18 truthfully almost through with the HECO processes, at
19 least with the EPA. The level of engineering and
20 involvement working with HECO on the solar farm of
21 this size is very different than doing the things we
22 had done previously.

23 So Forest City came to the transaction
24 with a lot of development construction, local
25 expertise. Hanwha Q Cells came having done lots of

1 utility scale PV farms. Our smaller PV farms here are
2 deemed utility scale. I don't really know where the
3 breaking point is on that. They are, but they weren't
4 20 megawatts.

5 Q Jon, you're aware that parcel 52, the
6 Robinson Kunia land parcel in question, is slated for
7 future residential development of about 580
8 residential units, correct?

9 A I am familiar.

10 Q Have you discussed the potential for
11 working with the Royal Kunia land group after the
12 solar farm is completed?

13 A Yeah. Happily. So Forest City's core
14 business would be things more apropos to the
15 eventually development here. That's more of what we
16 do. We're a very large company. We do things all
17 over the country. And more of what we do is the
18 traditional development I suppose. I don't know if
19 solar is not traditional but it's more of what people
20 think of this development. It's a terrific site. I
21 think it would be a great place for housing, a great
22 place for development.

23 However, it's at the end of the road.
24 There's a lot of things that sit between Kunia Road
25 where you'll access this site, and the place where we

1 would like to temporarily put the solar farm. It is a
2 great place. We would be interested in working with
3 the site, with the Robinson Trust in that future
4 scenario, but it is under no way, shape or form ready
5 today.

6 Q Thank you. I have no further questions.

7 CHAIR McDONALD: County, any cross?

8 MR. LEWALLEN: No thank you.

9 CHAIR McDONALD: Mr. Wong?

10 COMMISSIONER WONG: None from HRT.

11 CHAIR McDONALD: Mr. Yee?

12 MR. YEE: Thank you.

13 CROSS-EXAMINATION

14 BY MR. YEE:

15 Q Mr. Wallenstrom, first of all, thank you
16 for your work and cooperation and gracious assistance
17 in this case. Commissioner Wong asked a question
18 about the compliance with the proposed mitigation by
19 the traffic consultant. Let me ask a broader question
20 to see if we can get sort of a simple answer to all of
21 them. Will you be the -- let's back track. You're
22 the representative for the successor Petitioner in
23 this case?

24 A Yes. Yes.

25 Q So can you represent on behalf of

1 successor Petitioner that you'll be complying with the
2 recommendations of your consultants in this case? Let
3 me ask a more fundamental question. Your consultants
4 had a variety of mitigation recommendations in their
5 reports, correct?

6 A Yes.

7 Q Will you be complying with those
8 mitigation recommendations?

9 A Yes.

10 Q You saw that the Office of Planning
11 submitted various responses in various pleadings in
12 this matter and had various recommendations for
13 proposed conditions. Without getting into the detail,
14 is it fair to say there have been extensive
15 discussions between a variety of parties including
16 yourself and the Office of Planning?

17 A Yes. Harried, many discussions, yes.
18 Thank you, by the way, for engaging in all that.

19 Q So let me cut to the chase.

20 A Okay.

21 Q Has there been an agreement at the end of
22 all these discussions?

23 A There is an agreement, yes.

24 Q Is there an agreement on proposed
25 conditions to be submitted? Or an agreement at least

1 between Ho'ohana and the Office of Planning on the
2 conditions that should be applicable in this case?

3 A Yes.

4 Q Do you happen to know where the conditions
5 that were sent over to my office yesterday?

6 A Do I happen to know...

7 Q That was sent to my office yesterday that
8 the final form.

9 A Yeah. Yeah, yeah, yeah. I do.

10 MR. LIM: I'll represent to the Commission
11 we have that stipulation right here for signature by
12 the parties.

13 MR. YEE: So with the Commission's
14 approval at some point soon, we would like to submit
15 that so that we can discuss that with the Commission.
16 And so the Commission can understand what the parties
17 are asking for and why. I know that's a late
18 submittal. And you've already had to take late
19 submittals but I think it would help the questioning.

20 I think from Mr. Wallenstrom's cross I'm
21 okay with just confirming that there was a stipulation
22 reached. And for my purpose Mr. Funakoshi can discuss
23 those particular requirements. But if not, then I'm
24 going to start asking questions. (pause) It would be
25 submitted as an additional exhibit is what I guess I'm

1 asking.

2 CHAIR McDONALD: Mr. Yee, is this going to
3 be OP exhibit or Petitioner's exhibit?

4 MR. YEE: As either. We're happy to
5 submit it as, I guess, OP Exhibit 14.

6 CHAIR McDONALD: Okay. Did you provide
7 the chief clerk with ...?

8 MR. YEE: We'll do it later and I can
9 avoid Mr. Wallenstrom the specifics of it. We can do
10 it during Mr. Funakoshi's testimony later in the day.
11 So we can get you copies and all of that kind of
12 stuff. I know it's late. That's the reason why I'm
13 asking if I might be allowed to do that.

14 CHAIR McDONALD: Why don't -- I want the
15 Commissioners to be able to review the exhibit if it's
16 so admitted.

17 MR. YEE: Certainly.

18 CHAIR McDONALD: I'll note the request and
19 take it under advisement. But if you could provide
20 that documentation to the chief clerk so he can
21 distribute it to the Commissioners. And we'll have
22 that. And we'll take a quick look at it. As I said
23 if it's so admitted you can question Mr. Funakoshi on
24 the content.

25 MR. YEE: Okay. For purposes of time --

1 'cause I know we *all* want to finish today -- let me
2 end my questioning here with, perhaps, just the
3 ability to call Mr. Wallenstrom if we're not allowed
4 to submit. Would that be all right? If it's all
5 right with Petitioner.

6 MR. LIM: No objections.

7 MR. YEE: Thank you. Then I have no
8 further questions.

9 CHAIR McDONALD: Thank you, Mr. Yee.

10 COMMISSIONER SCHEUER: Can I ask a
11 procedural issue? Sorry. Just trying to understand
12 what's going on here. If there's a proposed agreement
13 between the Office of Planning and the Petitioner
14 we've heard about it. We haven't reviewed it. We'd
15 like to ask Rodney questions, but he's only one of the
16 parties. Will the Commission have a chance to ask Mr.
17 Wallenstrom questions about this after we've reviewed
18 it?

19 CHAIR McDONALD: Yes. Yes. We'll bring
20 him back. We'll request the Petitioner to bring back
21 Mr. Wallenstrom.

22 COMMISSIONER SCHEUER: Thank you, Chair.

23 CHAIR McDONALD: Mr. Lim, any redirect?

24 MR. LIM: No redirect.

25 CHAIR McDONALD: Commissioners, any

1 questions for Mr. Wallenstrom? Commissioner Scheuer.

2 COMMISSIONER SCHEUER: Mr. Wallenstrom,
3 can you talk, first, about what the option agreement
4 is between you and Robinson?

5 THE WITNESS: It's an option to lease.
6 Really it's a lease agreement would be the proper way
7 to describe it. But it's an agreement that allows us
8 to put physical improvements on this property for a
9 period of time and allow the PV farm to go forward.

10 COMMISSIONER SCHEUER: Sorry. There's
11 also mentioned in your testimony a solar -- a solar
12 agreement?

13 THE WITNESS: Probably the power purchase
14 agreement?

15 COMMISSIONER SCHEUER: No. It's a lease
16 agreement as well some kind of solar agreement. I was
17 trying to understand the relationship between the
18 option of the lease ad this other agreement and how
19 they're constructed.

20 THE WITNESS: So what we have -- and I'm
21 not going to look. I could probably read off it here.
22 We have an option to lease land from the Robinson
23 Trust. Actually that's repeating what I just said.
24 So essentially we've entered into and agreement with
25 the Robinson Trust to build improvements on this

1 property that would be done under the form of a lease
2 that would last through the length of the power
3 purchase agreement that we signed with HECO.

4 COMMISSIONER SCHEUER: So the point of
5 these questions I'm going to be asking you are really
6 getting at things that you've started to respond to
7 with Mr. Yee, but really from the Commission's
8 perspective. There's conditions on this property
9 which run with the property from the original Decision
10 and Order.

11 THE WITNESS: Correct.

12 COMMISSIONER SCHEUER: Right now you only
13 have an option agreement. So these conditions aren't
14 necessarily binding upon you, but they will be binding
15 upon you, all those conditions, when you enter into
16 this lease?

17 THE WITNESS: They will be binding upon --
18 you know, I guess what I would say is.

19 MR. LIM: Mr. Chairman, maybe what we will
20 do this kind of gets into the stipulation that we
21 have. Just as a representation the existing
22 conditions for the Petition Area will remain pretty
23 much as is with a couple of modifications relating to
24 the Condition 19 on the Ag park. Then we'll have a
25 separate set of conditions that apply only to parcel

1 52. So that's kind of how it's going to work.

2 We didn't initially, that's why we worked
3 to bifurcate but we couldn't reach agreement on that.
4 So we'll have a set of overall conditions applicable
5 to the whole Petition Area, and then another subset of
6 conditions applicable to parcel 52.

7 CHAIR McDONALD: Commission Scheuer, so
8 that leads back to your question. I think all the
9 Commissioners want to review that stipulated
10 agreement. If you have further questions regarding
11 the agreement by all means we'll request Petitioner to
12 come back with Mr. Wallenstrom.

13 COMMISSIONER SCHEUER: Okay. Just one
14 more, Chair.

15 CHAIR McDONALD: Sure.

16 COMMISSIONER SCHEUER: Mr. Wallenstrom,
17 just to phrase it slightly different what Mr. Yee did,
18 your consultants on this Project who are coming before
19 us as expert witnesses are making representations.
20 Those are your representations that we can rely on in
21 terms of any conditions imposed?

22 THE WITNESS: Yes.

23 COMMISSIONER SCHEUER: Thank you.

24 CHAIR McDONALD: Commissioner Aczon.

25 COMMISSIONER ACZON: Can you just give us

1 a quick summary on the structure of who is Ho'ohana
2 Solar relationship with Robinson, Forest City, kinda
3 structure.

4 THE WITNESS: Happily. So Forest City has
5 engaged with the Robinsons. And we have been moving
6 this transaction forward. Hanwha Q Cells is the other
7 party. So Forest City and Hanwha Q Cells come
8 together. Forest City provided all the, certainly the
9 majority of really, all of the initial investment as
10 the Project was proceeding. Hanwha Q Cells has been
11 coming into this Project investing as they've gone
12 forward. So we're in the midst of a partnership
13 that's coming together right now.

14 At the end of the day we will be partners
15 together in this transaction and proceed forward at
16 that point with certain percentage. And frankly I
17 don't know if I have to say this. But at the end of
18 the day Hanwha Q cells will own more than Forest City
19 will. But we will both be partners in the
20 transaction.

21 COMMISSIONER ACZON: The partnership is
22 with Ho'ohana and Forest City?

23 THE WITNESS: No, no. The partnership
24 name is Ho'ohana. Within that partnership you have
25 Forest City and Hanwha together.

1 COMMISSIONER ACZON: So who are the main
2 principal of Ho'ohana Solar 1 LLC?

3 THE WITNESS: The representative is here,
4 Larry Greene. He'll be speaking later. It could be
5 me, I suppose, as the representative, Ann Bouslog as
6 well. I'd like to have her sign more things than I
7 do. People from Hanwha -- more appropriately you
8 should ask Larry that question because I don't know
9 exactly who.

10 COMMISSIONER ACZON: I'm just trying to
11 get who is responsible for the conveyance, responsible
12 the Ho'ohana Solar.

13 THE WITNESS: I am responsible. I am the
14 main one responsible. Probably, and I'm saying that
15 at the end of the day Hanwha will own more of the
16 asset than will Forest City. I think the subtlety in
17 the answer is really for issues of land at least for
18 some period of time until it's up and operating.
19 Forest City would be responsible.

20 In terms of relationship with HECO, quite
21 frankly Hanwha's more responsible. So it's a subtle
22 answer but that's kind of the way it works. And it
23 makes sense. We're developers here. And I will tell
24 you that the electrical engineering associated with
25 20-megawatt PV farm is way beyond me. That's for

1 Hanwha's comments.

2 COMMISSIONER ACZON: So Ho'ohana Solar in
3 the main developer for these.

4 THE WITNESS: Correct.

5 COMMISSIONER ACZON: So recognized as a
6 successor Petitioner are they bound and obligated to
7 all requirements and conditions covering the land
8 subjected to the D&O for A92-683 Halekua?

9 THE WITNESS: I want to ask Steve to help
10 me. 'Cause this gets into that whole stipulation.

11 MR. LIM: Commissioner Aczon, is asking
12 you whether for Ho'ohana Solar 1 are you bound by the
13 overall conditions relating to the Petition Area for
14 the residential development?

15 COMMISSIONER ACZON: Do you believe those
16 are obligations of the landowner?

17 THE WITNESS: I believe they're
18 obligations of the landowners. The conditions run
19 with the land.

20 MR. LIM: It's exactly why we have --
21 you'll see the stipulation come to you soon where we
22 have separate conditions just for the solar farm.

23 THE WITNESS: And I don't want to say the
24 "landowner". So let me answer that correctly.

25 I think conditions -- again, I'm not an

1 attorney. But because I think about this things,
2 conditions run with the land. How that gets allocated
3 among the landowners is somewhat of a different
4 question. But conditions of approval run with the
5 land as a developer. That's what I think.

6 COMMISSIONER ACZON: We'll wait for the
7 stipulation.

8 CHAIR McDONALD: Commissioner Wong.

9 COMMISSIONER WONG: Real fast. I have a
10 question. How long is the lease, the land lease gonna
11 be?

12 THE WITNESS: It is, I think it's 35 with
13 the extension. Is it 35? Do you remember? I just
14 forgot. Does anybody know? It's 22 plus 2 five year
15 extensions.

16 COMMISSIONER WONG: Okay. So the question
17 I have is the length of the solar project itself is 20
18 years or 30 years?

19 THE WITNESS: Well, under the PPA with
20 HECO it could be as long as 35. Is that right?

21 COMMISSIONER WONG: Maybe we'll bring it
22 out at the next question.

23 THE WITNESS: Again this would be better
24 for Larry. I don't think the life of a PV panel, I
25 don't think anybody knows. It could be forever.

1 There's a contractual obligation or contractual
2 document with HECO that it has a duration.

3 COMMISSIONER WONG: So I'm just going to
4 bring that up at a later date. Just because of the
5 mobilization and also the demolit -- not demolition
6 but breaking down of the P.V. If you still have the
7 land or if it's gonna stay there and who takes it
8 down.

9 THE WITNESS: Nobody can answer that right
10 now.

11 COMMISSIONER WONG: Okay. Thank you.

12 CHAIR McDONALD: Just a quick question,
13 Mr. Wallenstrom. Forest City is a very experienced
14 housing developer in the state of Hawai'i. You had
15 mentioned that the parcel in question is for all
16 indents and purposes makes sense that it is the last
17 leg of the full buildout. As far as solar needs and
18 renewable energy, hey, I'm all for paying lower
19 electric bills. But as a housing developer was there
20 any consideration given to pursue the purchase of
21 increments 1 and 2?

22 THE WITNESS: Oh, ages ago, yes, but not
23 very serious consideration on our part. There have
24 been people pursuing that. Could be that things are
25 happening again now. It's a great location. I do

1 think it would be a great place for a housing
2 development. But I personally have not seriously
3 pursued that at this point in time.

4 I would love to -- I mean I wish whoever
5 is on it now the best of luck. I would love to, and
6 sometimes with guys like me it's a matter of timing.
7 I'm too busy over here to focus on something else.

8 CHAIR McDONALD: I just asked the question
9 because it's been sitting in Urban designation for
10 years. It's within the Urban land boundary.

11 THE WITNESS: Yeah. There are conditions
12 that run with this land that as -- and you folks have
13 experienced it -- we've certainly experienced it. It
14 confuses. It makes it difficult on the various
15 landowners. As the projects go through such as ours,
16 and we take certain bits of those obligations off the
17 table, we are absolutely unquestionably intending to
18 make improvements that are obligations to this land.

19 As we reduce that big nut of obligations
20 it becomes easier for the next person to come in.
21 This one's been held off because it's the tragedy of
22 the comments. One guy can't go forward because the
23 other guys are waitin' for the one guy to go forward.
24 So we will -- we're not gonna solve it all. We have a
25 much smaller Project than 2,000, 2,500 homes, whatever

1 that number is. But we will reduce some of the
2 problem that has kept this thing from going forward.

3 CHAIR McDONALD: Thank you,
4 Mr. Wallenstrom.

5 THE WITNESS: Okay. Thank you.

6 CHAIR McDONALD: Mr. Lim, your next
7 witness?

8 MR. LIM: Thank you very much. No further
9 questions for Mr. Wallenstrom. We'll be calling
10 Mr. Laurence Greene -- Mr. Larry Greene.

11 LAURENCE GREENE
12 being first duly sworn to tell the truth, was examined
13 and testified as follows:

14 THE WITNESS: Good morning. Yes, I do.

15 DIRECT EXAMINATION

16 BY MR. LIM:

17 Q Good morning, Larry. could you please
18 state your name and your business address?

19 A Yes. Laurence Greene, 8001 Irvine Center
20 Drive, Suite 1250, Irvine, California.

21 MR. LIM: For the Commission's information
22 Mr. Greene's resumé is at Exhibit 24 for Petitioner,
23 and his written direct testimony is Exhibit 34C. He's
24 been qualified as an expert in the area of solar
25 energy development and overall Project analysis.

1 Q Larry, what's your current occupation?

2 A I'm the principal of Greene Renewable
3 Energy, Inc. a renewable energy development
4 consultant. And I consult for Hanwha Q CELLS. And
5 for them I am responsible for utility-scale solar PV
6 development in the western United States. And also I
7 serve a public policy function for them.

8 Q Have you been involved in the development
9 of any other Hawai'i solar farm projects?

10 A Yes. Also for Hanwha Q CELLS that we just
11 last year finalized the development and put into
12 operation the Kalaeloa Renewable Energy Park, KREP in
13 the community of Kalaeloa. And that is a project that
14 is currently the largest solar PV farm on the Island
15 of O'ahu and the second largest in the state.

16 Q How many megawatts is that?

17 A That's 6.17 megawatts D/C.

18 Q You've heard the questions from
19 Commissioner Aczon in terms of the relative positions
20 of Forest City and Hanwha Q CELLS in the overall LLC
21 called Ho'ohana Solar 1, LLC.

22 A Yes.

23 Q Could you describe the scope of Hanwha's
24 involvement in the Project?

25 A Sure. Sure. As Mr. Wallenstrom said

1 they've had a great deal of success in developing
2 smaller utility scale solar farms in the state of
3 Hawai'i. We just recently developed this very large
4 solar farm, KREP. And so the way we're working
5 together is that Forest City and Hanwha Q CELLS are
6 working together to own the Ho'ohana Solar 1, LLC and
7 to develop this much larger approximately 20 megawatt
8 solar park on the Robinson Kunia lands.

9 Q Could you explain the Hawaiian Electric --
10 we'll call it HECO request for proposals and how this
11 all came about with the particular solar farm involved
12 on parcel 52?

13 A Sure. Hawaiian Electric in 2013 have put
14 forth a couple of procurement processes known as the
15 Wayward Project processes to develop solar farms
16 larger than 5 megawatts. And we responded to and are
17 now part of what's called the second round of Wayward
18 Projects with our proposed Project on the Kunia Lands.

19 So Hanwha Q CELLS being the, say, the
20 technical arm of the partnership with Forest City, we
21 were primarily responsible for matters such as
22 designing the facility and responding to the public
23 RFP process, and designing the interconnection and the
24 technical matters associated with the interface with
25 Hawaiian Electric Company.

1 Q What are the relative benefits for the
2 Ho'ohana Solar 1's Project when you compare with what
3 Hawai'i residents pay on average now versus what you
4 expect to bring in in terms of your cost per kilowatt
5 hour?

6 A Sure. The state of Hawai'i pays a great
7 deal for their imported fuel to generate electricity,
8 billions of dollars in fact. As a consequence of that
9 the ratepayers of Hawai'i pay nearly 3 times the
10 national average for their electricity bills. So what
11 this Project is able to do is to bring in solar energy
12 at a cost below Hawaiian Electric's avoided cost of
13 energy. And because it's -- because it is a solar
14 project that's fueled by renewable energy it will help
15 stabilize pricing for the ratepayers of Hawai'i.

16 Q We've talked about the urgency in getting
17 the Project moving and hopefully approved by the
18 Commission. So what is the target dates for operation
19 of the solar farm and the type of interim deadlines
20 that you might face as the developer of the solar
21 farm.

22 A Thank you. The process with Hawaiian
23 Electric started in early 2013. And we're nearly at
24 the end of 2014 right now. We're working very hard to
25 get this Project in operation by June of 2015 because

1 in December, the end of December 2000 I'm sorry, June
2 of 2016, is when we're looking to finalize the Project
3 and get it into operation. Because in December of
4 2016 the 30 percent ITC federal tax credit expires.
5 We wish to take advantage of those tax credits to
6 provide a lower priced product to HECO and the
7 ratepayers of Hawai'i.

8 So ultimately that's our driving deadline
9 is to get the Project in the middle of 2016 so it can
10 be definitely in operation before that December 2016
11 final deadline. But backing up the Project
12 development schedule from those dates, we're looking
13 to have a non-appealable Public Utilities Commission
14 approval of the Project by the middle of next year.

15 Specifically we're asking the PUC to rule
16 by May 1st so that the non-appealable decision can be
17 completed by June 1st. That keeps us on track with
18 that overall timing.

19 However, what that means is that Hawaiian
20 Electric must file to the PUC their power purchase
21 agreements by December 4th. That's been the date that
22 has been required by the PUC. And because of this
23 tight timeline it puts developers. such as ourselves,
24 under a lot of pressure that we normally are not under
25 from a perspective that normally until you have a

1 non-appealable Public Utilities Commission ruling that
2 the Project is going to go forward. You're not forced
3 to put millions of dollars at risk for the
4 interconnection, for example.

5 So because we are on this compressed
6 schedule for HECO to complete their physical
7 interconnection of the Project on time, we're looking
8 at millions of dollars of deposits coming due in
9 December. We're looking at -- we're actually
10 finalizing the PP negotiations just over these last
11 couple of weeks.

12 And we're looking to bring that initial
13 payment to HECO in December down into the 6 figure
14 range, so we're still negotiating on that. Certainly
15 by early 2015 the entire 7 figures for the
16 interconnection we do, which is before any kind of PUC
17 order is issued. So that is what's driving our
18 timeline and why the dates are as critical as they
19 are.

20 Q Your partial deposit to HECO for the
21 interconnection cost is due on what specific date?

22 A It is due -- if the payment is not made
23 and received by the 15th of December the Power
24 Purchase Agreement is null and void is my
25 understanding.

1 Q One of the questions from the
2 Commissioners to Jon Wallenstrom was the 30-year
3 operational period. Could you talk about how that
4 works with respect to the starter operations and then
5 the decommissioning?

6 A Yes. Yes. The initial -- well, first of
7 all, in general a utility scale solar PV farm, if you
8 go to the investment community, the financial
9 community that's gonna ultimately be the financial
10 backstop for the Project and finance the Project.
11 Projects such as this have a useful life of
12 approximately 30 years. Now, projects like this, you
13 know, need maintenance. And there'll be replacement
14 of parts from time to time. But the basic electrical
15 infrastructure is valid for 30, 35 years.

16 The initial contract with HECO, again the
17 contract has not been signed yet but it's due to be
18 signed very shortly, anticipates an initial period of
19 23 years. Our agreement with the Robinsons
20 accommodate an initial 22-year period plus 2,
21 five-year extensions currently. The time for
22 constructing the Project is approximately 9 months or
23 so, approximately. We anticipate a similar amount of
24 time, probably less, but, you know, 9 months to
25 decommission and take the Project down. Solar PV

1 farms are relatively -- they're not a complicated
2 technology. And they're relatively easy to unbolt and
3 take down when that time comes. So I'll stop there.

4 Q Okay. So we're looking at an operational
5 period of somewhere in the neighborhood of 30 years or
6 so?

7 A Correct.

8 Q Plus an additional takedown period of
9 another couple of years.

10 A Correct.

11 Q Is Ho'ohana putting up the financial
12 security to ensure that the decommissioning of the
13 solar farm when it's done?

14 A Yes. We have a contractual obligation to
15 our landlords to remove, properly remove the facility
16 at the end of its life. What we normally do as just a
17 course of good business practice, we are one of the
18 world's largest developers of solar PV facilities
19 around the world. What we do is starting about 10
20 years before the end of the life of the solar farm we
21 start setting aside monies in our operational budget
22 to build up a fund for decommissioning.

23 Q Assuming we are lucky enough to get the
24 approval of this motion, what are the next steps that
25 Ho'ohana expects to undertake before the solar farm

1 can be constructed?

2 A Well, the next steps, immediately we're
3 very close to signing a Power Purchase Contract with
4 Hawaiian Electric going through the regulatory process
5 for PUC approval, finalizing and then implementing the
6 interconnection procedures with Hawaiian Electric.
7 Then we would, after receiving PUC approval, then we
8 would move to the contracting for the construction of
9 the Project.

10 Q Would any city permits be required for
11 this Project?

12 A We will obtain the, I believe it's the
13 Department of Planning for City and County of Honolulu
14 that will ultimately issue, hopefully, a Conditional
15 Use Permit to construct the Project. And they're be
16 associated building permits as well. We will follow
17 those permits.

18 Q It's your understanding that the proposed
19 solar farm is a permitted use subject to issuance of
20 the CUP?

21 A Yes, that's my understanding.

22 Q Wrapping up lastly, you've had experience
23 with the Kalaeloa Solar Project. What is your
24 anticipated projection for jobs created both during
25 the construction period and during the operational

1 period?

2 A Yes. We anticipate on this Project, on
3 the Ho'ohana Project, approximately 50
4 construction-related jobs during the construct period,
5 and three permanent jobs and some additional part-time
6 jobs related to the maintenance of the facility. And,
7 you know, we base that experience on our recent
8 experience at the KREP Project site in Kalaeloa.

9 Q Where would the labor come from for the
10 proposed solar Project?

11 A We anticipate 95 percent or more of the
12 labor for the construction and the long-term operation
13 of the Project to be local, local jobs. At our
14 Kalaeloa Project I believe that it was, the figure was
15 about 98 percent. We're looking at about the same for
16 this Project as well.

17 Q Mr. Chairman, we're going to be having our
18 next witness Cliff Smith come to speak about the
19 specifics of the solar Project itself. So just to let
20 the Commission know they can ask him about those
21 questions. With that I have no further questions for
22 Mr. Greene.

23 CHAIR McDONALD: County?

24 MR. LEWALLEN: No questions.

25 MR. WONG: No questions.

1 MR. YEE: No questions.

2 CHAIR McDONALD: Commissioners, any
3 questions for Mr. Greene? Commissioner Scheuer.

4 COMMISSIONER SCHEUER: Mr. Greene on page
5 4 of your written testimony I think around line 18,
6 19, the question was asked, "What happens if the
7 Project is not approved by this Commission, and the
8 PPA approved by the PUC according to these deadlines?
9 And you proceed to answer "Ho'ohana will not be able
10 to proceed with this Project because the Project will
11 be economically unfeasible." I sort of read that as,
12 like, if we don't approve it it's our fault. Is that
13 a fair reading?

14 THE WITNESS: I don't think that was the
15 intention. I think the intention is that we're
16 already under an incredible stress to put millions of
17 dollars at risk for the Project by HECO and they're
18 timeline. So we need to have the land issue
19 resolution before we're able to make that commitment.

20 COMMISSIONER SCHEUER: Okay. When did you
21 become aware of Condition 19 of the previous Decision
22 and Order?

23 THE WITNESS: I would say that, again, in
24 the structure of the relationship of this partnership,
25 my focus is primarily technical matters. And my

1 partner Forest City is the local land expert. So me
2 personally I would say I'm not as familiar with all of
3 the nuances of that.

4 COMMISSIONER SCHEUER: Thank you.

5 CHAIR McDONALD: Commissioner Ahakuelo.

6 COMMISSIONER AHAKUELO: Hi, Mr. Greene.
7 green. I have some questions regarding the ratepayer.

8 THE WITNESS: As far as the kilowatt per
9 hour and given that the solar farm typically operates
10 during the daytime, can you speak on how you or what
11 you believe would help stabilize the rate structure
12 for O'ahu? Sure.

13 I think that specifically the procurement
14 that HECO is going through for these utility scale
15 solar projects they've set maximum prices. And our
16 proposal was under these maximum prices. If you look
17 at the cost that they, you know, for them to bring in
18 fuel to, you know, currently fossil fuel to currently
19 operate their system.

20 What we're able to do using solar energy
21 is to provide energy at a cost that is lower than that
22 cost to bring in the fossil fuels. And by being a
23 renewable energy resource that just means you're not
24 subject to the vagaries of fuel prices over the next
25 30 years. You've got as long as the sun keeps shining

1 here in Hawai'i you're gonna have those electrons
2 generated at a fixed price.

3 COMMISSIONER AHAKUELO: The other question
4 I have is in regards to peak load being typically in
5 the evening. Are you saying that the electricity
6 generated from your solar farm basically offset is the
7 use of fossil fuels?

8 THE WITNESS: HECO will operate their grid
9 to make sure that the grid is reliable and stable. So
10 whether it's a sunny day, a cloudy day, late in the
11 afternoon when the sun is going down and the solar
12 farms are generating less electricity everything is
13 managed.

14 From an energy generation perspective
15 while the solar farm generating it's that much less
16 fossil fuel that will be used.

17 COMMISSIONER AHAKUELO: Thank you.

18 CHAIR McDONALD: Commissioner Wong.

19 COMMISSIONER WONG: Okay. Following up on
20 Commissioner's Ahakuelo's statement. Are you planning
21 to have a battery structure or batteries to hold --

22 THE WITNESS: No. No utility scale
23 batteries will be used on this site.

24 COMMISSIONER WONG: The question on the
25 panels themselves, are they moving panels or fixed?

1 THE WITNESS: These panels -- I'm going to
2 advise you that our next fellow Cliff Smith, can tell
3 you more about the specific details, technical
4 details. But we're planning on tracking panels to
5 optimally produce from the solar field.

6 COMMISSIONER WONG: So I have a question.
7 It's going to be all related somehow. (Laughter).
8 Will there be ground cover between the panels?

9 THE WITNESS: There will be open areas
10 between the panels. There'll be ground cover. But I
11 think Mr. Smith will be able to describe that more
12 fully for you.

13 COMMISSIONER WONG: Then the facility
14 itself it will be gated and security would be around
15 the clock?

16 THE WITNESS: Yes.

17 COMMISSIONER WONG: I guess I'll hold my
18 question for Mr. Smith about some other issues.

19 THE WITNESS: Okay.

20 CHAIR McDONALD: Commissioner Aczon.

21 COMMISSIONER ACZON: Thank you very much
22 for your testimony. I think you answered most of my
23 questions, especially the labor force.

24 THE WITNESS: Yes.

25 COMMISSIONER ACZON: Just one quick

1 question. The Project is contingent to PUC's approval
2 of HECO d.b.a. between Ho'ohana.

3 THE WITNESS: Yes.

4 COMMISSIONER ACZON: I'm assuming you
5 folks are discussing this with PUC and how confident
6 are you that you're gonna get PUC's approval in a
7 timely manner to make this Project.

8 THE WITNESS: Well, the PUC has approved
9 both the first and second round of waived projects
10 so they've been very involved in this process with
11 HECO. We've spoken to the PUC to give them to
12 underscore the sense of urgency. I think that all of
13 the other waived Project developers are likely to
14 have the same perspective that time is of the essence.
15 So I think the PUC is hearing that from more than just
16 us. We are specifically requesting them to act by
17 this May to June timeframe. I believe they have all
18 of the information that they need. If they need more
19 we'll supply it to them quickly. So I'm confident
20 that they can get this done.

21 COMMISSIONER ACZON: Thank you very much.
22 That's all.

23 CHAIR McDONALD: Commissioner Wong.

24 COMMISSIONER WONG: Sorry. One more
25 question. You said you developed the Kalaeloa solar

1 panel?

2 THE WITNESS: Yes.

3 COMMISSIONER WONG: Did you have to do a
4 EA or EIS for that?

5 THE WITNESS: That Project was under was
6 under -- it was Navy lands. So we did go through a
7 full NEPA process on that. And coincidentally one of
8 our consultants on that Project as Mr. Smith as well.
9 So he can probably answer some of those questions.

10 COMMISSIONER WONG: Get ready, Mr. Smith.

11 THE WITNESS: Thank you.

12 CHAIR McDONALD: Thank you, Mr. Greene,
13 for your testimony.

14 THE WITNESS: Thank you.

15 MR. LIM: Our next witness will be
16 Mr. Cliff Smith. Mr. Smith's resumé is at successor
17 Petitioner's Exhibit 28. His written direct testimony
18 is at Exhibit 34B.

19 CHAIR McDONALD: Mr. Lim, I'm going to ask
20 that we take a short 5-minute recess for our court
21 reporter. (recess) We're back on the record.
22 Mr. Lim, your next witness, please.

23 MR. LIM: Thank you, Mr. Chairman. We
24 have Clifford Smith who is our next witness. His
25 resumé is Petitioner's Exhibit 28. His written direct

1 testimony is Exhibit 34B.

2 CLIFFORD SMITH

3 being first duly sworn to tell the truth, was examined
4 and testified as follows:

5 THE WITNESS: Yes.

6 CHAIR McDONALD: Thank you.

7 MR. LIM:

8 DIRECT EXAMINATION

9 BY MR. LIM:

10 Q Would you please state your name and
11 business address.

12 A Yes. My name is Clifford Allen Smith. My
13 business address is 857 Anapuni Loop in Lahaina,
14 Hawai'i.

15 Q Would you please describe your scope of
16 involvement in this Project.

17 A Yes. I was retained by Hanwha Q CELLS as
18 a project manager to help with local design
19 coordination, permitting and also to assist with the
20 Solar Glare Hazardous Analysis Study that was
21 submitted to the FAA.

22 Q We have a lot of your detailed information
23 in your Exhibit No. 34B. Could you please just give
24 the overall details of the Project.

25 A Yes. What I'd like to do is refer to

1 Successor Petitioner's Exhibit No. 17. It's basically
2 a site plan. I'll walk you through the site plan;
3 give you a high level overview of the Project. The
4 property Project boundary or the parcel is 161 acres.
5 The fenced in area of our Project, this green line, is
6 124 acres. So we're using less than the full parcel.

7 When you look at the blue area here that's
8 the actual PV modules themselves. We're using a
9 single access tracker that was discussed. So it
10 tracks the sun throughout the day. The height of the
11 modules at the low point would be 4 feet aboveground
12 and at the high point would not exceed 9 feet. We're
13 actually design it a little bit less than 9 feet but
14 what we're staying is basically we wouldn't exceed 9
15 feet as we go through detail design.

16 The blue area, once you add up that kind
17 of area footprint plus also the concrete pads we're at
18 about 39 acres of area covered by something on the
19 site. So in 161, 124 acre Project then 39 acres is
20 actually covered by something.

21 As part to have the Project you'll see
22 there's an existing 46kV line that transects the site.
23 That's what makes this a nice site for a project as
24 there's a existing interconnection point to
25 interconnect to HECO.

1 Q Excuse me. We have a court reporter. So
2 she has to take down everything you say. And you
3 speak rather rapidly. So, please speak slower.

4 A I'm sorry. So the 46kV line crosses the
5 parcel. We're going to interconnect and we have to
6 build out a substation. So we have to step up our
7 voltage up to the transmission or sub-transmission
8 46kV. So part of our scope is to build a substation
9 onsite. The substation is about 12,000 square feet,
10 120 feet by about a hundred feet.

11 Inside there is a step-up transformer, a
12 circuit breaker and a structure that's called a dead
13 end structure that interconnects to HECO's existing
14 utility line.

15 As part of the Project we have 3 small
16 buildings. There's a control building adjacent to the
17 substation. That building measures approximately
18 35 feet by 12 feet. We have an operations and
19 maintenance building that measures 30 feet by 30.
20 Feet. We're gonna store parts in there plus also a
21 2-gaters to access the site, kind of throughout the
22 site for O&M personnel.

23 The third building is a security building.
24 Right now we have in our application that we would not
25 exceed a thousand square feet. And we're looking at

1 that design. We're approximately 600 feet right now.
2 So what we've stated there is actually the largest we
3 would have as a security building.

4 Q Are there going to be any batteries on
5 site?

6 A There are no utility-scale batteries, but
7 there are three small batteries. Just to be
8 technically correct there are 3 small batteries
9 within the control building that's used to feed backup
10 equipment. There's a data recorder that HECO records
11 data. So the batteries would feed that time of
12 equipment.

13 Q How long is construction expected to take?

14 A Construction should take about 9 to 12
15 months. So 9 to 12 months. We're targeting 9 months.

16 Q Did you check whether or not the Project
17 would generate glare to air traffic?

18 A We did. As part of that the FAA they
19 basically require any PV Project that is at an airport
20 to go through a solar glare hazard analysis study.
21 We're about 4 to 5 miles away from the airport. So we
22 didn't automatically trigger the study. But what the
23 FAA did say is they have navigational equipment in
24 this vicinity. So they asked us to file an
25 obstruction evaluation, air space analysis study. As

1 part of that we submitted a solar hazard analysis.

2 We conducted this study via Sandia
3 National Labs. They have a website where you do the
4 study. We found that 2 of the runways there was
5 minimal glare with low potential for after image
6 ocular occurrence. We submitted all those reports to
7 the FAA. They came back with a no determination of
8 hazard to air space.

9 MR. LIM: For the Commission's information
10 those are filed as Successor Petitioners Exhibits 20A
11 through 20D.

12 Q Are the PV modules that's being used for
13 the project the same as those used for rooftop solar?

14 A They are basically the same. But they're
15 slightly rated higher from a voltage output. They're
16 72 cell. most residential are 60 cell. So what you'll
17 see is the size of the modules is slightly bigger,
18 about 10 inches longer in length. Then you have a
19 slightly higher voltage output. But in general it's
20 the exact same material with the exact same metal
21 frame on the outside.

22 Q What kind of fire protection measures do
23 you have in place for this Project?

24 A Well, there's currently no requirement for
25 sprinkler or foam or anything of that nature. The

1 substation area is where the high voltage equipment
2 would be. Common practice is to put down a gravel bed
3 and make sure there's no weeds that pop up. And keep
4 it as a no grass or weed zoned area. That's basically
5 to control any sort of fuel or combustion source. If
6 there's sparks from the equipment you want to control
7 the fuel that would be available for those sparks. So
8 that would be all implemented.

9 We also plan to have a perimeter road
10 improvement around the fenced in area. That's roughly
11 20 feet in dimension. That will provide a fire break
12 in case there's a fire offsite coming toward the
13 Project. Then, lastly, and I think it's pretty
14 important to note that the Fire Department will get an
15 opportunity to review our Project during the building
16 permit review process. We plan to sit with them and
17 make sure we adopt any of their recommendations.

18 Q Will the Project have any adverse effects
19 on individual residential solar interconnections?

20 A No. So the residential connections are
21 connected at the distribution level, 12 kV circuit.
22 HECO follows a process highlighted through the PUC
23 rule 14H which looks at the circuit penetration at the
24 12kV line. If it exceeds a certain percentage and
25 that percentage over time has changed, but if it

1 exceeds a certain percentage, then HECO starts to look
2 at other studies that might be required for an
3 individual residential system. We're tying in at a
4 46kV line that's sub-transmission. So we're tying in
5 at a different rated kV line.

6 Q So there would be no impact on individual
7 residential solar interconnections?

8 A Correct.

9 Q Lastly, upon decommissioning what happens
10 to the solar farm components?

11 A Well, for our Project we haven't developed
12 a full decommissioning plan. But we're looking about
13 30 years out from now. What is interesting about the
14 PV modules themselves they should in a 30-year time
15 period degrade about .6 percent a year. It's kind of
16 the average degradation rate. So in 30 years they'd
17 still have 80 percent of their rated output. So
18 they'll still have a useful life. They'll have a
19 useful purpose.

20 So the intent would be to recycle them or
21 reuse them locally or send them to the mainland to be
22 used for other potential uses for generating
23 electricity.

24 MR. LIM: No further questions.

25 CHAIR McDONALD: County, cross?

1 MR. LEWALLEN: No questions.

2 CHAIR McDONALD: Good morning.

3 Commissioner.

4 MR. WONG: Good morning, Commission. I've
5 asked the Commission to take notice that my name is
6 Irwyn Wong. I'll be substituting for Delwyn Wong on
7 behalf of HRT 300 Corporation and Honolulu, Ltd.

8 CHAIR McDONALD: Okay. Thank you,
9 Mr. Wong. Mr. Yee?

10 CROSS-EXAMINATION

11 BY MR. YEE:

12 I have 2 brief lines of questioning, one
13 about fire, the other about water. In a prior case I
14 think the Commission was aware of a fire in another
15 solar facility involving a utility scale battery
16 storage. In this case you informed us there was not
17 going to be a utility scale battery storage. But
18 there would be some backup batteries for equipment.
19 Could you describe what fire hazard, if any is posed
20 by these batteries? And if so, what type of
21 mitigation would be done?

22 A Sure. Well, the size of the batteries
23 they're likely to be lead acid, and they're likely to
24 be the size of a car battery, about 3 of those
25 side-by-side. They're quite common as kind of UPS

1 grade batteries. They would be inside the control
2 building. So we would -- currently there's no design
3 for a sprinkler system or a foam system in there.
4 When it comes to detailed design we'll have to look at
5 the appropriate way that those batteries are isolated.
6 It is standard to keep them separate from the other
7 equipment in the building. I hope that addresses your
8 concern.

9 Common things -- I'm not sure we're going
10 to implement this 'cause it would have to be in the
11 design stage. But common things you could do is do
12 fire-rated drywall, stacking 5/8ths drywall to
13 together to give the facility a couple hours of time
14 in case the batteries do combust. That would be a
15 common measure for mitigation.

16 Q Do you happen to know whether that would
17 part of any future review process by the City?

18 A It would be standard review during the
19 building permit process, yes.

20 Q And as part of that building review
21 process would there also be considerations regarding
22 potential contamination that might result from a fire?

23 A In regards to leaking from the battery?

24 Q Yes. Is there anything about putting it
25 on, making sure it's on a cement area, that it's

1 separated from the ground?

2 A Yes, yes. That would be common to look at
3 any sort of containment practices for batteries. And
4 like I said, these are pretty small items. Those
5 practices would be implemented, be common.

6 Q Yes, thank you. The Office of Planning
7 noted in its comments, that recommended that there be
8 consultation with U.S. Fish and Wildlife and that
9 there were reports about the possibility that birds
10 might mistake certain types, at least, of solar panels
11 as ponds, lakes or other bodies of water. Have you
12 done any consultation yet with the U.S. Fish and
13 Wildlife?

14 A I personally have not. But I know that in
15 one of the studies we were looking to adopt lighting
16 that was downcast to minimize the impact. I think
17 that's under review by the project team.

18 Q Are you aware that the lighting,
19 down-shielding of lighting is designed to avoid having
20 birds mistake lights as stars? I was really referring
21 more to the issue of whether the solar panels might be
22 mistaken for bodies of water. Do you know if there's
23 been any consultation or discussion of that issue?

24 A Not that I'm aware.

25 Q Okay. Do you believe there's going to be

1 some consultation with US Fish and Wildlife for
2 appropriate mitigation, if any?

3 CHAIR McDONALD: If you don't know the
4 answer you can state as such.

5 THE WITNESS: I don't know the answer, I'm
6 sorry.

7 MR. YEE: Okay.

8 Q Are you aware of the issue of solar panels
9 as being a potential problem for birds who might
10 mistake the solar panels as bodies of water?

11 A I have heard of that issue before. I'm
12 not sure if this type of technology is going to be an
13 issue as may be concentrated solar power, the mirrors.
14 I think those provide issues for birds. And PV could
15 also -- I mean I don't know if it's gonna be it an
16 issue or not.

17 Q Concentrated solar power panels have been
18 an issue regarding potential heat problems caused in
19 the air for birds, is that right?

20 A Yes, that's what I've heard.

21 Q Have those particular panels also been a
22 problem with respect to being mistaken as bodies of
23 water?

24 A My understanding is that they have, but
25 I've not worked on a concentrated solar power project.

1 So I wouldn't qualify myself as an expert on that
2 area.

3 Q All right. Thank you.

4 MR. YEE: Nothing further.

5 CHAIR McDONALD: Any redirect, Mr. Lim?

6 MR. LIM: One redirect question.

7 REDIRECT EXAMINATION

8 Q You've been working also on the Kalaeloa
9 renewable energy park that Mr. Greene talked about,
10 correct?

11 A Yes.

12 Q Are you aware of any birds landing on
13 those solar panels?

14 A No.

15 MR. LIM: Just golf balls. No further
16 questions. (Laughter)

17 CHAIR McDONALD: Commissioners, any
18 questions for Mr. Smith?

19 COMMISSIONER WONG: Mr. Smith, question.
20 What type of groundcover will be used?

21 THE WITNESS: We're looking at putting
22 some grass down through hydro-seed.

23 COMMISSIONER WONG: So how would it be
24 maintained? Mechanical or natural?

25 THE WITNESS: Natural rainfall.

1 COMMISSIONER WONG: I mean in terms of are
2 you going to cut it?

3 THE WITNESS: Yes, correct, yes. It's
4 pretty common to have, because of fire concerns and
5 other maintenance concerns, it would be common to cut
6 it fairly often to maintain it.

7 COMMISSIONER WONG: Will you be using
8 herbicides?

9 THE WITNESS: Currently we would not. But
10 if it did become a problem, weeds became a problem we
11 would only use state of Hawai'i approved herbicides.

12 COMMISSIONER WONG: Another question is
13 the prior witness stated this would be moveable
14 panels, correct?

15 THE WITNESS: Correct. Single access
16 tractor panels that track the sun throughout the day.

17 COMMISSIONER WONG: So they'll be run
18 hydraulically?

19 THE WITNESS: There would be a motor that
20 turns a shaft that turns a set of modules.

21 COMMISSIONER WONG: Will there be any oils
22 or anything to help move that panel?

23 THE WITNESS: The motor itself is
24 hermetically sealed so any of the oils in the motor
25 will be there.

1 COMMISSIONER WONG: There won't be any
2 runoff.

3 THE WITNESS: The array technology that
4 we're looking at doesn't have the oil fittings that
5 you typically see because it's kind of a clutch. S,
6 yes, all of the oil in the motor would be inside,
7 hermetically sealed inside.

8 COMMISSIONER WONG: The other question I
9 was going about, that Mr. Yee was talking about for
10 the fire. The substation itself will have a
11 transformer.

12 THE WITNESS: Correct.

13 COMMISSIONER WONG: Transformers usually
14 filled with oil?

15 THE WITNESS: Correct.

16 COMMISSIONER WONG: So let's say there's a
17 possibility of a fire 'cause I've seen several
18 transformers spark and create a fire. You're not
19 going to even use some sort of gas mitigation?

20 THE WITNESS: The transformer that we're
21 looking at has a mineral oil, so that's the type of
22 oil. Sot it's not as toxic as other types of
23 transformer oils. But there's no -- the standard
24 substation design doesn't require a suppression system
25 inside the substation.

1 COMMISSIONER WONG: The other thing I was
2 going to ask is you are going to have security on
3 site. So the issue is what type of infrastructure
4 will you need for them, the individuals to relieve
5 themselves of nature's call?

6 THE WITNESS: Yes. That's a good
7 question. Inside the security building we do plan on
8 having a restroom, we'll have a septic. And also
9 we'll have the three, 4,000 gallon tanks to support
10 potable water needs for cleaning the modules but also
11 for that facility.

12 COMMISSIONER WONG: So there will be no
13 tie-in to any city...?

14 THE WITNESS: Correct.

15 COMMISSIONER WONG: Thank you.

16 CHAIR McDONALD: Commissioner Scheuer.

17 COMMISSIONER SCHEUER: We recently, in
18 fact, on today's agenda finalized the D&O for a
19 different solar project. One of the representations,
20 if I recall it correctly from that applicant was, that
21 Petitioner was they committed to not landfilling any
22 materials at the end of the decommissioning on island.
23 Is that a representation that you are willing to make?

24 THE WITNESS: As a consultant I'm not in
25 that position to speak on behalf of the owner.

1 COMMISSIONER WONG: One more thing. You
2 know I do golf. In general when I'm golfing sometimes
3 I see military planes or helicopters flying over. Was
4 the military ever consulted about this issue?

5 THE WITNESS: When the FAA receives an
6 O.E. report or it's a Form 7460. When we submit that
7 to the FAA sends it out to roughly 20 different
8 departments. One of the departments locally is the
9 military. So my understanding -- I didn't speak
10 directly to the military -- my understanding is they
11 had an opportunity to review our solar glare analysis
12 study plus the other parts of the form when we
13 submitted.

14 COMMISSIONER WONG: Thank you.

15 MR. YEE: Commissioners, could I ask a
16 follow up question to Commissioner Scheuer's question
17 on recycling?

18 CHAIR McDONALD: Sure.

19 MR. YEE: Just very briefly.

20 REDIRECT

21 BY MR. YEE:

22 Q Mr. Smith, if I could turn your attention
23 to your written testimony on page 9, lines 23 through
24 25. Is there anything in that that you could say that
25 would address Commissioner Scheuer's concerns?

1 A As we discussed the modules themselves
2 will have a useful life. At 30 years they should be
3 about 80 to 82 percent of their initial rating
4 capacity. So there should still be some use left,
5 actually a majority. So the intent is to repurpose
6 those modules either locally or even potentially
7 shipping them back to the mainland. That's the
8 intent. As far as 100 percent commitment, I'm not in
9 that position.

10 Q The rest of the line was: "or to salvage
11 and recycle the solar farm component." Is that also
12 part of your intent?

13 A Correct, yes correct.

14 Q So the intent is then to use and not to
15 have at least any significant landfill use after
16 decommissioning.

17 A Correct. That's the intent, correct.
18 And, you know, like we stated there's a lot of use
19 left in those modules. So we believe there's gonna be
20 someone who will adopt those and take those over
21 because they still have a lot of use.

22 Q At least that would be your
23 recommendation.

24 A Absolutely.

25 MR. YEE: Thank you.

1 CHAIR McDONALD: Okay, Commissioner
2 Scheuer. I mean I understand what Mr. Yee is trying
3 to get at but there's also other components that we
4 need to look at such the foundation is concrete and
5 whether you folks going to do with that, recycle that
6 type of material. So Commissioner Scheuer will have
7 his chance at a future witness I suppose. I got a
8 quick question.

9 As far as stormwater runoff from the
10 proposed Project, any concerns or issues that you know
11 we need to be aware of? I understand that you folks
12 still need to go to county?

13 THE WITNESS: Correct.

14 CHAIR McDONALD: In which that's more
15 their purview as water quality, stormwater quantity.
16 But can you make any type of statements with regards
17 to stormwater impacts?

18 THE WITNESS: Sure. The site is
19 relatively flat. There are -- the Project Area slope
20 is anywhere from 2 percent to 8 percent slope.
21 Anything above 5 percent slope we will need to
22 rectify. And there is a berm along the western
23 portion. And the berm stretches for approximately
24 2,000 feet. It's sized anywhere from 3 feet to
25 5 feet, kind of in that scale. It does get up to 10

1 to 12 feet in certain areas. That berm would need to
2 be leveled. So there will be some site work to
3 address that. We would do, you know, typical standard
4 practices to file for an NPDES, National Pollution
5 Discharge Elimination System. The Department of
6 Health Clean Water Branch. So we would file for that.
7 We'd file a grading permit with the city and county.
8 As part of those items we would do a drainage study.
9 And through the conditional use permit process the
10 standard condition is to require a drainage study. So
11 I think most of those issues are going to be addressed
12 through those permits.

13 CHAIR McDONALD: Thank you. Any further
14 questions for Mr. Smith? Thank you for your
15 testimony.

16 THE WITNESS: Thank you.

17 MR. LIM: Thank you, Mr. Chairman. Our
18 next witnesses that we have scheduled would be
19 Mr. Robert Spear who is our archaeologist and Mr. Eric
20 Guinther who is our flora and fauna witness. We have
21 submitted written direct testimony for them. I would
22 open them up for cross-examination and questions been
23 the Commissioners. Mr. Spear is coming up to the
24 witness stand now. His resumé is Exhibit 25. His
25 study is Exhibit 12. And his written direct testimony

1 is Exhibit 34E.

2 CHAIR McDONALD: Thank you, Mr. Spear.

3 xxx

4 ROBERT SPEAR, Ph.D.

5 being first duly sworn to tell the truth, was examined
6 and testified as follows:

7 THE WITNESS: I do.

8 CHAIR McDONALD: So no direct. We're
9 going to go directly into cross.

10 MR. LIM: Yes. Well, let me do a short
11 lead-up. Dr. Spear, could you please give a brief
12 summary of your findings and your recommendations for
13 archaeological and cultural issues for this Project?

14 THE WITNESS: Sure. The archaeological
15 issues or findings where we had 2, initially 2 sites
16 with archaeological sites. One of 'em was a mixture
17 of modern and historic debris. Then after we studied
18 it further we realized it had actually been an area
19 that had been pushed around a lot. It had no
20 integrity.

21 The second site is components of the
22 agricultural system that was out there: crushed coral
23 road paved, an alignment of stone and concrete and
24 retaining wall that was cemented in with a pipe in it.

25 Our recommendations were that first one

1 was the smeared site was not significant at all. The
2 second on was significant under Criteria D which is
3 the information. We have gathered all the information
4 for that we needed to do. We have no recommendations
5 beyond that. There's no reason to monitor.

6 Cultural issues. The Project's been Ag
7 for a hundred years. So we also talked to Shad Kane
8 about the Project Area. We both have the feeling that
9 there's no significant cultural sites there, no
10 ongoing cultural practices. So from our perspective,
11 my perspective there's no issues in the archaeological
12 site.

13 Q So wrap up question is: So in your
14 professional opinion will the Project adversely impact
15 any archaeological historic or cultural resources?

16 A In my opinion, no.

17 MR. LIM: No further questions.

18 CHAIR McDONALD: County, cross?

19 MR. LEWALLEN: No questions of Mr. Spear.

20 CHAIR McDONALD: Mr. Wong?

21 MR. WONG: No questions.

22 CHAIR McDONALD: Mr. Yee?

23 MR. YEE: Just for an update. At the time
24 I think this was submitted I assumed there was no
25 response yet from SHPD. Has there been any change?

1 THE WITNESS: I wish I could tell you
2 there was, but no I'm sorry there has not been.

3 MR. YEE: Thank you. Nothing further.

4 CHAIR McDONALD: Mr. Lim, any redirect?

5 MR. LIM: No redirect.

6 CHAIR McDONALD: Commissioner Mahi.

7 COMMISSIONER MAHI: I noted on the
8 testimony you mentioned Shad Kane as being the kupuna
9 consultant. Was only Shad consulted? (off mic) Was
10 only Shad Kane consulted? Were there any other kupuna
11 in that area, some of the old names of that area which
12 we all forget like those that know the Lihue area or
13 other name we use is Waianae Uka. Those are names
14 that we use from the past.

15 So I was wondering if there were any local
16 kupuna there were contacted especially those there are
17 from the Honouliuli area, Wahiawa and so on. Where
18 there other areas of kupuna that you had a chance to
19 talk story with?

20 THE WITNESS: No, we only talked to Uncle
21 Shad.

22 COMMISSIONER MAHI: Only to Uncle Shad.

23 THE WITNESS: Yes.

24 CHAIR McDONALD: Commissioner Scheuer.

25 COMMISSIONER SCHEUER: So just to confirm

1 so groups like Na Wa Hinei O Kunia, Native Hawaiian
2 cultural group, heavily concerned with protection of
3 the archaeological resources in that area, you had no
4 contact with them about any potential practices in
5 that area?

6 THE WITNESS: No, we did not.

7 COMMISSIONER SCHEUER: Thank you.

8 CHAIR McDONALD: No questions. Thank you
9 Mr. Spear for your testimony.

10 THE WITNESS: Thank you very much.

11 MR. LIM: I can probably take one last
12 witness.

13 CHAIR McDONALD: How many more? You have
14 three more witnesses?

15 MR. LIM: We have 2.

16 CHAIR McDONALD: Two more. We'll take
17 more witness before the break.

18 MR. LIM: I'll call Eric Guinther.
19 Mr. Guinther is going to be testifying on flora and
20 fauna. He's been qualified as an expert witness as
21 was Dr. Spear. His resumé is Exhibit 30. His report
22 is Exhibit 18. And his direct written testimony is
23 Exhibit 34F.

24 ERIC B. GUINTHER
25 being first duly sworn to tell the truth, was examined

1 and testified as follows:

2 THE WITNESS: I do.

3 CHAIR McDONALD: Please proceed.

4 DIRECT EXAMINATION

5 BY MR. LIM:

6 Q Please state your name and business
7 address business, please.

8 A Eric Guinther, 45-939 Kam Highway in
9 Kaneohe.

10 Q Please describe your involvement with the
11 particular Project on parcel 52 for the solar farm.

12 A Yes. I and another biologist surveyed
13 the site on 2 different dates looking for any
14 significant natural resources. I'm a botanist. I
15 look for plants. The other biologist is a bird
16 biologist. He concentrated primarily on birds.

17 Q Please describe in general your findings.

18 A Well, neither of us found anything of
19 particular concern or significance with respect to the
20 natural resources on the site.

21 Q Did you detect any endangered Hawaiian
22 Hoary bat presence on the property?

23 A We did not. Bats are generally difficult
24 to detect, actually, on O'ahu particularly during the
25 day. But the other biologist addressed that issued in

1 the report that we prepared.

2 Q Did the survey that you performed identify
3 any threatened or endangered species or any federally
4 declared critical habitat on or within parcel 52?

5 A Neither. We found no listed, proposed for
6 listing or special organisms of any kind. And there's
7 no critical habitat in that area.

8 MR. LIM: No further questions.

9 CHAIR McDONALD: County, any cross?

10 MR. LEWALLEN: No questions.

11 CHAIR McDONALD: Mr. Wong?

12 MR. WONG: No questions.

13 CHAIR McDONALD: Mr. Yee?

14 CROSS-EXAMINATION

15 BY MR. YEE:

16 Q Mr. Guinther, I appreciate the review you
17 did of the site. Did you happen to look at any --
18 whether there had been any impact from the particular
19 solar panels or generally from solar panels on birds?

20 A If you're talking about the issue of birds
21 mistaking the panels for water, for example?

22 Q Yes.

23 A We didn't look into it specifically. I
24 hadn't actually heard of that 'til more recently. I
25 think it's a phenomenon that has been observed on the

1 mainland. It's not heard of it being, having occurred
2 anywhere in Hawai'i at this time.

3 MR. YEE: Okay. I have nothing further,
4 thank you.

5 CHAIR McDONALD: Redirect?

6 MR. LIM: No redirect.

7 CHAIR McDONALD: Commissioners, any
8 questions for Mr. Guinther? Mr. Guinther, thank you
9 for your testimony.

10 THE WITNESS: Thank you.

11 CHAIR McDONALD: At this point in time --
12 well, let me make a statement. The Commission has
13 received OP's Exhibit No. 14, Mr. Yee. And what we're
14 asking the Commissioners to do over our lunch break is
15 to review the document that was mentioned that you'll
16 be questioning. Mr. Funakoshi's Testimony will be
17 based on Exhibit No. 14.

18 MR. YEE: He was intending to refer to
19 that document, yes.

20 CHAIR McDONALD: So, Commissioners, can
21 you take notice and spend some time over our lunch
22 break to review OP's Exhibit No. 14. So with that
23 we'll reconvene at 1:00. It is now 12:05.

24 (lunch recess 12:05-1:15)

25 CHAIR McDONALD: We're back on the record.

1 Mr. Lim, I believe you had discussed taking witnesses
2 out of order.

3 MR. LIM: That's correct, Mr. Chairman.
4 We are going to defer to the Office of Planning. And
5 we'll come back on afterwards.

6 MR. YEE: Thank you. We appreciate the
7 courtesy by the Parties. If we could we'd like to
8 call Rodney Funakoshi out of order.

9 RODNEY FUNAKOSHI
10 being first duly sworn to tell the truth, was examined
11 and testified as follows:

12 THE WITNESS: Yes.

13 CHAIR McDONALD: Thank you. Please
14 proceed.

15 DIRECT EXAMINATION

16 BY MR. YEE:

17 Q Could you please give your name and
18 position to the Commission.

19 A My name is Rodney Funakoshi. I'm with the
20 Office of Planning. I'm a planning program
21 administrator with the Land Use Division.

22 Q What is the position of the Office of
23 Planning in this case?

24 A The Office of Planning recommends partial
25 approval subject to conditions for the subject motion.

1 OP has no objection to recognizing Petitioner Ho'ohana
2 as a successor Petitioner. OP also has no objection
3 to the proposed change in use subject to conditions,
4 and has no objection to amending Condition 21 to
5 change the current approval requirement to a notice
6 requirement.

7 You'll likely hear more about this later,
8 but Condition 19 of the 1996 Order required the
9 developer to convey an agricultural park to the state
10 and to provide offsite utility infrastructure to the
11 park. In 2004 the developer dedicated 150 acres to
12 the state of Hawai'i for an agricultural park. The
13 initial Memorandum of Agreement required the submittal
14 of preliminary site plans for infrastructure
15 improvements by 2008.

16 This deadline was since extended three
17 times. And the infrastructure has still yet to be
18 provided.

19 MR. YEE: Excuse me, Mr. Funakoshi. Can
20 you make sure the microphone is close to you.

21 MR. FUNAKOSHI: Overall, the proposed use
22 for solar farm development is consistent with the
23 Urban District classification and the Commission rules
24 for Urban District standards and permissible uses
25 in Hawaii Administrative Rules.

1 Unlike other proposals for utility scale
2 solar energy facilities on Agricultural District
3 lands, this is fully permissible in the Urban
4 District. Solar energy production is a clean
5 renewable energy resource strongly supported by the
6 state to promote energy self-sufficiency and reduce
7 our reliance on imported fossil fuels.

8 OP also has no objection in the proposed
9 change in use subject to the imposition of conditions
10 as discussed below. There are a few key issues of
11 concern to the state. 1. Timely performance. OP
12 notes that after 2 decades Increment 1, Increment 2
13 and Increment 3 are of Royal Kunia Phase 2 are all
14 uncompleted.

15 MR. YEE: I'm sorry, Mr. Funakoshi. I
16 forgot something if you don't mind allowing me to
17 interrupt. Chair McDonald, I forgot to ask to admit OP
18 Exhibit 14 as an exhibit as I believe Mr. Funakoshi
19 will be soon be referring to the document.

20 CHAIR McDONALD: I was just thinking that.
21 Parties, any objections?

22 MR. LIM: No objection.

23 CHAIR McDONALD: Commissioners? OP
24 Exhibit 14 is admitted.

25 MR. YEE: Thank you. I'm sorry,

1 Mr. Funakoshi, please continue.

2 MR. FUNAKOSHI: The 1996 Decision and
3 Order did not require the Project to be completed by a
4 deadline. However, it did state that Phase 2 is
5 anticipated to be completed in 12 years. Under
6 Condition 20 the landowners are required to develop
7 the Petition Area in substantial compliance with the
8 representations made to the Commission.

9 OP, therefore, is recommending a revised
10 Master Plan and development schedule for the entire
11 Petition Area. We did refer the motion for review to
12 a number of state agencies and one federal agency.
13 And we did get some comments which we have reflected
14 in proposed conditions of approval.

15 The State Airports and Highways expressed
16 concern from overflights from aircraft and possible
17 glare. Relative to State Highways the DOT noted that
18 their comments on the proposed use does not replace
19 their concerns for roadway improvements needed by
20 Increments 1 and 2. The DOT did find that the
21 proposed solar farm should not adversely affect State
22 Highway facilities.

23 They did provide recommendations for the
24 mitigation of any hazardous conditions both to
25 aircraft and to motorists.

1 Condition 19 has been meet today by the
2 Petitioner -- I'm sorry. Condition 19 has *not* been
3 met to today by the Petitioner. It required not only
4 to convey a 150-acre agricultural park and stage, but
5 also to provide offsite infrastructure to the park.

6 DOA has recently received an appropriation
7 allotment and release of funds for development of the
8 onsite infrastructure within the agricultural park
9 such that the development of the offsite
10 infrastructure is now becoming time sensitive.

11 The Fish and Wildlife Service responded in
12 their letter to us that there is the possibility of
13 the federally endangered Hawai'i Hoary Bat that may
14 forage and roost in the Project Area. That was not
15 mentioned in the Petitioner's Biological Survey.

16 They also indicated some concern with the
17 PV systems whereby waterfowls and shorebirds may be
18 affected by the resemblance of water with the solar
19 panels and its proximity to important migratory paths.

20 So we have recommended a condition for
21 consultation with the U.S. Fish and Wildlife Service
22 for training programs and mitigation measures for any
23 adverse impacts on endangered and migratory avian
24 species.

25 I would like to make one further point of

1 clarification for the record. It was noted that
2 relative to the Land Study Bureau classifications that
3 it is not -- I believe, Petitioner's consultant
4 testified that it is not on the current maps. I'd
5 like to correct that. The Land Study Bureau maps that
6 were done in the '70s have not been updated since
7 then.

8 What he is referring to is that the GIS
9 maps that OP maintains upon reclassification, does not
10 provide the LSB ratings. But in cases particularly
11 where the land is not yet developed the underlying
12 soil remains the same. For the subject Petition Area
13 94 percent are rated LSB "A" lands. So I'd like to
14 correct that for the record.

15 We have been in communication with
16 Petitioners as well as the Department of Agriculture.
17 And the primary concern, of course, is both with the
18 timing of performance as well as the agricultural
19 park.

20 The OP's Exhibit 14, I'd like to refer you
21 to page 4: New conditions applicable to the Petition
22 Area. I will not read, but I will summarize the major
23 conditions here.

24 Relative to the Royal Kunia agricultural
25 park offsite infrastructure, within six months of the

1 date of the Commission's Order, the landowners within
2 the Petition Area shall finalize and comply with an
3 amendment to the Memorandum of Understanding dated
4 1993 and subsequent amendments, to provide offsite
5 infrastructure to the Kunia agricultural park no later
6 than December 31, 2016.

7 Secondly, revised Master Plan. That
8 within 12 months the landowners shall submit a revised
9 Master Plan and schedule for development of their
10 respective Increments 1, 2, and 3 comprising the Royal
11 Kunia Phase 2 Project.

12 And third. By March 31st, 2015 all
13 landowners within the Petition Area shall submit to
14 the Commission a status report on the development of
15 their respective parcels of land. There's also been a
16 set of conditions that are applicable solely to the
17 solar farm development on parcel 52.

18 And as counsel for the Petitioner pointed
19 out this replaces essentially their motion to
20 bifurcate. So what is being provided here are several
21 new conditions that would be applicable. First: To
22 provide the Royal Kunia agricultural park non-potable
23 water connection. This is from an existing reservoir
24 that's already in use.

25 And this will be provided to

1 specifications mutually acceptable to the Petitioner
2 Ho'ohana and the Department of Agriculture.

3 Secondly, relative to Fish and Wildlife
4 protection, that Ho'ohana shall consult with the U.S.
5 Fish and Wildlife Service to coordinate staff training
6 programs and measures to mitigate adverse impacts on
7 endangered and migratory avian species.

8 Archaeological and historic resources,
9 that no ground-altering activities shall occur prior
10 to obtaining approval of the Archaeological Inventory
11 Survey from State Historic Preservation Division.

12 For aircraft and traffic hazards. If the
13 photovoltaic array creates a hazardous condition for
14 pilots or motorists, the facility operator shall
15 immediately initiate steps to mitigate the hazard upon
16 notification by the Department of Transportation.

17 Fifth. Development schedule. The
18 proposed solar farm shall be substantially completed
19 within 2 years from the approval date of this Decision
20 and Order.

21 And 6. Compliance with representations
22 that Ho'ohana shall develop a solar farm in
23 substantial compliance with the recommendations
24 reflected in the amended Decision and Order.

25 And that failure to develop parcel 52 as a

1 solar farm as represented will constitute good cause
2 for the Commission to issue an Order to Show Cause
3 pursuant to section 15-15-93 of the Commission Rules.

4 The only other thing I would like to add
5 is that, as mentioned by Mr. Yee, OP finds that this
6 current matter does not affect the Office of
7 Planning's stipulation in 2003 as well as the 2004
8 Order which would exempt HRT from any Order to Show
9 Cause proceeding. That concludes my testimony.

10 Q I'm going to ask for some clarification.
11 First of all, the stipulation from the Office of
12 Planning and the Order from the Land Use Commission
13 were two different documents, correct?

14 A Yes.

15 Q And the Order dealt with the compliance
16 with Condition 19, is that right?

17 A Yes.

18 Q The LUC -- the stipulation from the Office
19 of Planning was a broader stipulation, is that also
20 correct?

21 A Yes.

22 Q So the Order to Show Cause did not bind
23 the Land Use Commission from issuing an Order to Show
24 Cause for other conditions outside of Condition 19.
25 Do you remember that?

1 A Yes. That's correct.

2 Q And for the record I think the record will
3 speak for itself. We'll certainly defer to the
4 Commission on the interpretation of the documents,
5 just to provide clarity of OP's view.

6 Let me go back to the conditions. What
7 I'm going to ask you is not so much what the proposed
8 stipulated conditions are, but to relate these
9 conditions, again, to why the Office of Planning is
10 proposing them. So can you refer back? Do you have
11 OP's Exhibit 14 in front of you?

12 A Yes.

13 Q Let's go back to page 4 condition, what
14 I'm going to call A1. I think you testified earlier
15 that Condition 19 required the completion of the
16 offsite infrastructure up to the Kunia agricultural
17 park. Do you remember that?

18 A Yes.

19 Q Has that currently been complied with?

20 A Ah, no.

21 Q What does proposed Condition A1 address?

22 A Well, it's basically to, again, amend the
23 Memorandum of Understanding and to try to provide --
24 not try -- but require the provision of the offsite
25 infrastructure with a specific new deadline of

1 December 31st, 2016.

2 Q That's an extension of the current
3 deadline, is that right?

4 A Yes.

5 Q Without getting into Mr. Teruya's
6 testimony later, do you understand that this is
7 acceptable to the Department of Agriculture?

8 A Yeah.

9 Q A2 is the revised Master Plan. Why is the
10 Office of Planning asking for a revised Master Plan
11 for the parties?

12 A Primarily, if you recall, we also
13 expressed a similar concern for the Waiawa Ridge
14 proposed use that has not been developed for a very
15 long period of time. Similarly the subject Petition
16 Area, since its reclassification has remained
17 undeveloped.

18 We believe that although this particular
19 Project only reflects the increment 3 solar farm use,
20 that the entire Petition Area should be subject to a
21 revised Master Plan and development schedule.

22 The Commission only just last year
23 reviewed and approved an amendment to a traffic
24 condition for Royal Kunia Phase 2. And the
25 representation at the time was that development was

1 expected to get underway very shortly.

2 So since we still have not -- we don't
3 have a clear understanding at this time yet of what
4 the revised Master Plan and schedule is for these
5 developments, we'd like that to be done fairly
6 quickly.

7 Q Similarly with Condition A3?

8 A Yes. For the status report is being
9 requested by March 31st, 2015 to basically get an
10 update from the Petitioners on where they stand
11 relative to development of their respective parcels of
12 land. This status report can be a written status
13 report.

14 Q And so would the purpose, then, be to try
15 to hopefully spur on construction and development for
16 at least increments 1 and 2?

17 A Yes.

18 Q Condition B1 is regarded as the
19 non-potable water connection. That's, I think, where
20 we're pretty clear why that's a good thing for the
21 agricultural park. Let me just quickly go through
22 some of the others. A2, that resolves your concerns
23 you expressed regarding comments from the U.S. Fish
24 and Wildlife Service?

25 A B2.

1 Q Yes. Then B-3 what is that intended to
2 address?

3 A There's still -- they have still not yet
4 received acceptance of their Archaeological Inventory
5 Survey from the State Historic Preservation Division.
6 And that needs to be obtained prior to
7 ground-disturbing activities.

8 Q Is this common in other District Boundary
9 Amendments?

10 A Yes.

11 Q The aircraft and traffic hazard. I think
12 we dealt with. The development schedule, this is only
13 applicable to the solar farm, is that right?

14 A Yes.

15 Q What's the purpose of this development
16 schedule condition?

17 A It's basically to set a deadline for the
18 completion. We understand that's consistent with
19 their timeframe for development as well.

20 Q Are development schedules also common in
21 District Boundary Amendment proceedings to put a
22 deadline for completion of construction or
23 infrastructure at least?

24 A Yeah, for infrastructure, yes.

25 Q And then compliance with representations.

1 It's only applicable to the representations with
2 respect to development of the solar farm, is that
3 right?

4 A Yes.

5 Q And so is this also common in District
6 Boundary Amendment proceedings?

7 A Yes.

8 Q So this would make the current new --
9 would it be fair to say that these additional
10 conditions would at least bring the new construction
11 or new proposed development to be more consistent with
12 the current conditions that are imposed on District
13 Boundary Amendment proceedings today?

14 A Yes.

15 Q Unless you have any other thing that I
16 missed, I have nothing further, thank you,
17 Mr. Funakoshi.

18 CHAIR McDONALD: Mr. Lim, any cross?

19 MR. LIM: Thank you, Mr. Chairman.

20 CROSS-EXAMINATION

21 BY MR. LIM:

22 Q Just a technical correction first, Rodney.
23 When you state that our consultant didn't mention the
24 Hawaiian Hoary Bat, I refer you to Successor
25 Petitioner's Exhibit 18 which is the AECOS report by

1 Eric Guinther at page 14 where it states: The
2 Hawaiian Hoary Bat was not detected during the course
3 of this survey. Would that correct your statement on
4 that?

5 A He may not have seen it. But the U.S.
6 Fish and Wildlife does contend that they do forage in
7 that area. So that does not change the
8 recommendation.

9 Q Okay. With respect to the Condition 19 at
10 the state agricultural park, the first Memorandum of
11 Understanding was, as I understand it, entered into
12 back in March 30, 1993, is that correct?

13 A I believe so.

14 Q Then soon thereafter the first Decision
15 and Order for the Royal Kunia Phase 2 Project came out
16 and was adopted by the Commission I'll represent to
17 you on December 9, 1993, is that correct?

18 A Yes, I believe so.

19 Q So the Memorandum of Understanding was
20 under discussion by the State, and I'm assuming the
21 Department of Agriculture, for a long time throughout
22 these proceedings; is that fair to say?

23 A Yes. I would also prefer deferring that
24 question to our Department of Agriculture
25 representative who will also be testifying after me.

1 Q Is that Mr. Teruya?

2 A Ah, yes.

3 Q Okay. I'll ask you also. But as far as
4 you know was the Robinson Kunia land or the Robinson
5 family entities ever a party to any of the, I think
6 there's 4 versions of the MOU?

7 A I don't know.

8 Q Okay. I'll ask Mr. Teruya that question.
9 So you feel that with the adoption of the new
10 conditions applicable to the Petition Area and the new
11 conditions applicable solely to the solar farm on
12 parcel 52 as identified in OP Exhibit No. 14, that the
13 proposed solar farm on parcel 52 is a reasonable use
14 of the land?

15 A Yes. We would support approval.

16 MR. LIM: Thank you very much. No further
17 questions.

18 CHAIR McDONALD: County, any cross?

19 MR. LEWALLEN: We have no questions, thank
20 you.

21 CHAIR McDONALD: Mr. Wong?

22 MR. WONG: No questions.

23 MR. YEE: No redirect.

24 CHAIR McDONALD: No redirect.

25 Commissioners, any questions for Mr. Funakoshi?

1 Commissioner Scheuer.

2 COMMISSIONER SCHEUER: Hi, Mr. Funakoshi.
3 Can you help me understand how from having had the
4 chance to review this Exhibit 14 over lunch? The
5 signatories on it are the successor Petitioner in this
6 case and the Office of Planning. But there's -- three
7 of the conditions are applicable to the entire
8 Petition Area. But the other landowners are not
9 parties to it? So how is this going to be binding on
10 the other parties -- landowners in the Petition Area?

11 MR. YEE: Commissioner Scheuer, if I could
12 answer the question because I think it's a legal
13 issue. It's a fair question. It is not binding and
14 we're not representing that this represents an
15 agreement with the other parties. It is an agreement
16 between Ho'ohana and the Office of Planning. We want
17 to submit that to you that Ho'ohana and the Office of
18 Planning are in agreement.

19 It's our understanding that the City at
20 least will have no objections. CAN Partners which is
21 fully aware of this case, based of discussions I've
22 had, are not here to object. Of course, HRT Entities
23 is currently here to say whether or not they have any
24 objections to it. Although I have a belief they're
25 not. I don't want to represent their positions.

1 But the document itself, you know -- you
2 wouldn't take necessarily the document itself to be an
3 agreement of the parties. You'd have to take that
4 with the remaining record and those who are or are not
5 objecting to it. Am I being clear?

6 COMMISSIONER SCHEUER: Sorry. I'm still a
7 little bit confused.

8 MR. YEE: This document in and of itself
9 is only an agreement between Ho'ohana and the Office
10 of Planning.

11 COMMISSIONER SCHEUER: That I'm clear on.

12 MR. YEE: Everyone else, although I think
13 they're not going to object, they will have to tell
14 you that themselves. You can't get that from the
15 document itself. You're going to have to get that
16 from the lack of objection or their statement of no
17 objection, if that's what they say to you.

18 COMMISSIONER SCHEUER: So I share the
19 concerns that it's taken so many years for this
20 Project to come to fruition. I share the desire to
21 see the Project to move forward as a whole in the
22 context of this discussion for an interim use, the
23 part 3.

24 MR. YEE: Increment 3.

25 COMMISSIONER SCHEUER: If I'm calling it

1 the wrong thing I apologize. Increment 3. But I'm
2 interested in, I guess, from Mr. Funakoshi how does
3 knowing that the other parties have not signed onto
4 this, how does it give the Office of Planning the
5 comfort that this condition will actually go into
6 place?

7 MR. FUNAKOSHI: Well, I believe the
8 attorneys have been in communication, extensive
9 communication with each other. All are aware of the
10 current conditions that are being stipulated, at this
11 point only by 2 parties. But we're not aware of any
12 objections by any other party to any of the
13 conditions.

14 MR. YEE: I'm sorry. If I could -- it's a
15 very technical question, if I could try to answer
16 this. This stipulation is not gonna bind the other
17 parties. I want to be clear about that. This
18 stipulation is what we're submitting to you asking you
19 to put it into your D&O. And your D&O will bind the
20 parties. That's the concept we have behind this.

21 That a Decision and Order -- everyone has
22 an opportunity to come and object if they have any
23 disagreement with it. But it's up to you to decide
24 what the conditions are to be assessed. This is our
25 suggestion. If you agree and if you put it into the

1 Order then it binds every party to within the Petition
2 area.

3 COMMISSIONER SCHEUER: Thank you to both
4 of you for clarifying that.

5 CHAIR McDONALD: Commissioner Wong?

6 COMMISSIONER WONG: Since following the
7 Commissioner's statement I'm going to ask Mr. Wong,
8 did you read the stipulation?

9 MR. WONG: Yes, I have.

10 COMMISSIONER WONG: Do you have any
11 problem with it?

12 MR. WONG: Well, based upon the certain
13 representations by Mr. Yee earlier in the day, we do
14 not object to the stipulation. Our primary concern
15 was that the OP not only bound by the previous Order
16 in 2004 but also agree to the additional terms and
17 conditions and the stipulation from December 30, 2003.
18 Once we have assurances as to that aspect, then we do
19 not object as to the present stipulation.

20 COMMISSIONER WONG: City and county?

21 MR. LEWALLEN: Thank you. Thank you,
22 Commissioner. First of all, the City supports this
23 Project. It thinks this is a compatible use with this
24 specific land. The City has come to a different
25 conclusion regarding some of the conditions. It

1 wouldn't have required those and feels reticent to be
2 put in a position to have to enforce conditions that
3 it wouldn't have required. And I'm just speaking off
4 the cuff here.

5 Just looking at Conditions A1 through 3
6 appear to be not related to the use that we're talking
7 or solar farm seems to be related to past promises
8 broken or failed.

9 So the City is not going to step in the
10 way. The parties have agreed to undertake these
11 things. It's just saying that you wouldn't have
12 required that. It never stepped back and hope it
13 won't broker the deal, but it doesn't want to -- the
14 signs say: This is what we would have done too. So
15 there's no objection to the Project.

16 CHAIR McDONALD: Thank you.

17 COMMISSIONER HIRANAGA: Mr. Chairman?

18 CHAIR McDONALD: Commissioner Hiranaga?

19 COMMISSIONER HIRANAGA: Just for
20 clarification on the statement that the County just
21 made. So are they saying they're not going to be
22 signing as Department of Planning and Permitting for
23 this document?

24 MR. LEWALLEN: That is correct.

25 COMMISSIONER HIRANAGA: Thank you.

1 CHAIR McDONALD: Aren't you folks at all
2 interested in the ultimate or future use of this
3 Project Area, Petition Area as a whole?

4 MR. LEWALLEN: As a whole? You mean for
5 this purpose right here?

6 CHAIR McDONALD: No. I'm talking for the
7 increments 1, 2 and 3 in which OP's proposed Condition
8 A2 references. I'm just curious. (general laughter)
9 As to a planning -- as to a planning tool for the
10 City, you know, 'cause you made that statement that
11 the County would not necessarily put on the Petitioner
12 the conditions noted A1, 2 and 3. And part of that is
13 the Master Plan.

14 MR. LEWALLEN: I think -- and I don't want
15 to speak out of school because I'm the attorney, not
16 the department itself. I'm its attorney. But, yes,
17 it would have an interest in that, but we don't appear
18 to be there yet. That's coming into fruition.
19 They're talking about a 30-year period now with this
20 property, it's rather than sitting fallow, will serve
21 a different purpose.

22 Those prior conditions were already there
23 anyway. So if there's going to be a minor deviation
24 for the next couple of decades, then when that
25 deviation has passed.

1 CHAIR McDONALD: You may not be able to
2 answer this, but I know -- or you may or may not. If
3 not that's fine. As far as the CDUP, Conditional Use
4 Permit I should say, will the county go into the
5 Master Planning for the entire Petition Area or just
6 focus in on the solar farm area?

7 MR. WATKINS: The Conditional Use Permit
8 (off mic) Okay. This is Mike -- okay.

9 MIKE WATKINS
10 being first duly sworn to tell the truth, was examined
11 and testified as follows:

12 THE WITNESS: Yes, I do.

13 MR. WATKINS: I'm Mike Watkins of the
14 Department of Planning and Permitting. With regard to
15 the Conditional Use Permit it is always a permit for
16 the proposed use. It has nothing to do with the State
17 Land Use Boundary Amendment as a whole. It's simply
18 for the solar farm.

19 So the specific answer to that question is
20 "no." The conditional use permit is purely
21 ministerial and is purely about the proposed use. And
22 I have a partial answer to your earlier question: Do
23 we care about the delay?

24 Our development plan system is different
25 from the State Land Use boundary amendment system as

1 it's currently working. A lot of the State Land Use
2 boundary amendments either talk about timetables for
3 development or have conditions about when they should
4 develop. Whereas our development plans have a gross
5 boundary that says: Basically within this limit urban
6 development can occur over the next several decades.
7 We don't care when each development occurs.

8 In fact, we used to have an 'Ewa
9 Development Plan phasing map that said you could not
10 get rezoning in certain areas until, say, a decade or
11 15 years after. So we are looking at it in terms of
12 spacing out housing developments to meet the market
13 demand. And throughout the Central O'ahu Sustainable
14 Communities Plan it says this kind of thing. It
15 doesn't matter when the project starts.

16 The critical thing to us is is there any
17 way to get infrastructure out there yet. And if not
18 we don't care how long ago the State Land Use Map
19 Boundary Amendment was approved, we will not rezone
20 it. We don't think it's right for development.

21 So to us the Land Use Commission and the
22 Office of Planning are trying to meet Decision and
23 Order conditions that are totally obsolete for
24 virtually all of the land use approvals in this area
25 that did not build quickly. And that it's been 20 or

1 30, 40 years since they have been approved and nothing
2 has happened yet.

3 So we're simply not all that concerned
4 about the timeline, of course, about the failure to
5 develop. Of course, we're completely in agreement.
6 You can ask them what their timeline is. That makes
7 sense.

8 I believe the Canpartners group is fairly
9 close to developing now that they have, now that they
10 have been released from that onerous highway
11 improvement condition. So it may actually be a good
12 time to ask.

13 But in terms of the stipulation we do not
14 want to impose these conditions. We don't think
15 they're necessary. And the Petitioner has said that a
16 couple of them are, pretty much are not going to come
17 into play anyway.

18 CHAIR McDONALD: Go ahead.

19 MR. LEWALLEN: May I ask a follow up
20 question to the witness?

21 CHAIR McDONALD: To Mr. Funakoshi?

22 MR. LEWALLEN: Well, which one?

23 (Laughter). It's a good point.

24 CHAIR McDONALD: Go ahead.

25 MR. LEWALLEN: Okay. I just want to make

1 sure what you've testified correctly in points. He
2 stated that the Conditional Use Permit is ministerial.
3 In fact it's not a ministerial; is that correct?

4 MR. WATKINS: Ah, excuse me. There are 2
5 types of Conditional Use Permits. This is a minor
6 permit. It does not require a hearing. And neither
7 permit goes before the city council. So I believe
8 that's considered ministerial. But I'll have to
9 confirm that with my boss if you want to wait a
10 moment. (pause) Excuse me. It's a discretionary
11 permit. It's a little bit more of a situation where
12 it can be turned down.

13 MR. LEWALLEN: Thank you, Chair.

14 CHAIR McDONALD: Thank you. I'll reserve
15 my comments for later. Commissioners, anything else
16 for Mr. Funakoshi? Commissioner Aczon. Commissioner
17 Aczon, go ahead.

18 COMMISSIONER ACZON: Just one quick
19 question. I understand the city is not imposing these
20 conditions. Are they objecting to these conditions?

21 MR. LEWALLEN: No. No, Commissioner.

22 CHAIR McDONALD: Commissioner Hiranaga.

23 COMMISSIONER HIRANAGA: I was wondering if
24 anyone knows what the dollar amount of the
25 appropriation for the state of Hawai'i is for the Ag

1 Park onsite infrastructure improvements?

2 MR. YEE: We have some very specific
3 information through Mr. Teruya. The money's that's
4 been appropriated by the Department of Agriculture.
5 So yes, I think he has that information.

6 COMMISSIONER HIRANAGA: I guess I'll ask
7 these questions now. So just briefly looking at
8 Conditions A1, 2 and 3. Notice in A1 and A2, the
9 second line of A1 it says "of the Commission's Order
10 *the* landowners within the Petition Area."

11 Then A2 second line it says *the*
12 landowners. But then in line 3, March 31st, 2015 it
13 says *all* landowners. I'm just wondering if there's
14 some type of legal significance. The first 2 lines
15 *the* landowners. The third condition is *all*
16 landowners.

17 MR. YEE: That's probably directed toward
18 me, Commissioner.

19 COMMISSIONER HIRANAGA: I don't know who
20 crafted this document.

21 MR. YEE: From my perspective there was no
22 intention to make any distinction. I don't think I'd
23 have an objection if you wanted to make it more
24 consistent.

25 COMMISSIONER HIRANAGA: I'm not going to

1 advise you as to how to word this document. Just
2 wondering why.

3 MR. YEE: We were working really fast.

4 COMMISSIONER HIRANAGA: I'm wondering if
5 there's a need to define what offsite infrastructure
6 is in your condition A1 to second-to-last line.
7 'Cause I believe in a previous document I read it
8 says, "Roadways, potable and irrigation waterlines,
9 sewerlines, utility connections up to the boundary of
10 the Ag Park."

11 So I'm just wondering when you say
12 'provide offsite improvements' if there's any reason
13 for interpretation by the parties as to what's being
14 required.

15 MR. YEE: We will work to include those
16 kinds of information, the findings of fact. I'm sorry
17 we didn't give you the full document. There's
18 obviously a much longer background to all of this.
19 We're trying to get only the language the parties
20 would agree on. But you're right. I think you're
21 absolutely correct and we'll make sure that happens.

22 COMMISSIONER HIRANAGA: Couple more
23 questions. On the, I guess, Condition B1 on the
24 second page at the top. If an EIS is required, time
25 period shall be delayed for the EIS for the

1 non-potable waterline?

2 MR. YEE: Yes.

3 COMMISSIONER HIRANAGA: I don't fully
4 understand, again, following Commissioner Scheuer's
5 questioning about other parties not signing this
6 document. It's still kind of still cloudy in my mind
7 how this is going to impact the other landowners.

8 By their failure to object that they are
9 then, I guess, consenting by failure to object to be
10 bound by this agreement. Maybe that would be
11 clarified further down the road today.

12 MR. YEE: I could either do it in argument
13 if you want to wait for argument, or I could try to
14 give you my best answer now. It's up to you.

15 COMMISSIONER HIRANAGA: I'll defer to the
16 Chair.

17 CHAIR McDONALD: We'll wait to argument,
18 Mr. Yee.

19 MR. YEE: Thank you.

20 CHAIR McDONALD: Commissioner Wong.

21 COMMISSIONER WONG: I have a quick
22 question, Mr. Yee. It says A1, 2 and 3. I would like
23 to say all landowners just for the sake. Even the
24 landowner who has been unresponsive would have to be
25 doing this, sign off on the Master Plan and all that,

1 is that correct?

2 MR. YEE: If the LUC issues these
3 conditions in its Decision and Order, it would bind
4 anyone who owns land within the Petition Area, which
5 would include all landowners including anyone who
6 participated or didn't participate in this case.

7 COMMISSIONER WONG: So asking HRT now, you
8 understand that, is that correct? That you have,
9 what, March 31st, 2015 to do a status report and
10 revise the Master Plan within 12 months of the date of
11 the Commission's Order?

12 MR. WONG: Well, with respect to the
13 status report, yes. I mean we will be fine with that.
14 As far as the master, there's so many parties involved
15 that I don't know. I can't commit as far as what
16 everybody else is doing with their interest in the
17 entire development.

18 MR. LIM: Perhaps I could clarify because
19 a lot of negotiations and discussions and drafts have
20 been flying back and forth between the parties. So
21 I'll represent to you that we've sent that to all the
22 landowners and the parties who haven't responded
23 officially that you've seen them submit anything.

24 I think with the exception of the RKES
25 entity that owns the school site, they didn't respond

1 to anything at all. Everybody else has been in the
2 mix. We've come here today, I'll represent to you my
3 understanding the other property owners are -- they're
4 not going to come here and tell you that, but they
5 don't have any objections to what we're proposing now.
6 That's why we entered into the stipulation.

7 We would urge that the Commission adopt
8 the proposed conditions. If you do, then we record
9 that Decision and Order against all the properties.
10 It becomes applicable to all the landowners within the
11 Petition Area, like Mr. Yee said.

12 I think if you ask any particular
13 landowner, "Are you gonna do this? Are you going to
14 do that?" That's the discussion between the
15 landowners that happens privately. But the way it's
16 going to be set up is the overall recordation will be
17 against all properties.

18 They already have -- at least some of the
19 landowners already have agreements, contractual
20 agreements, on who's gonna do what in terms of these
21 conditions.

22 COMMISSIONER HIRANAGA: I have a question,
23 Chair.

24 CHAIR McDONALD: Commissioner Hiranaga.

25 COMMISSIONER HIRANAGA: Just for clarity

1 Condition A1, HRT is exempt from that requirement, is
2 that correct?

3 MR. YEE: HRT will not be required to put
4 in the infrastructure.

5 COMMISSIONER HIRANAGA: Right.

6 MR. YEE: That's correct.

7 COMMISSIONER HIRANAGA: The revised Master
8 Plan is for both, for all 3 increments?

9 MR. YEE: Yes.

10 COMMISSIONER HIRANAGA: So it must be
11 coordinated, I guess, to be a Master Plan. All units
12 have to agree the Master Plan, there's going to be,
13 like, 3 Master Plans reaching agreement separately?

14 MR. YEE: I believe what's going to happen
15 is there's going to be 2 Master Plans, one for
16 Increment 1 and 2 and a separate Master Plan for
17 Increment 3. I'm going to do something I probably
18 shouldn't. I understand that there is a Master Plan
19 for Increments 1 and 2.

20 That's partly the reason why I don't
21 envision a lot of problems with the Master Plan. But
22 we haven't given you that Master Plan 'cause it's not
23 final. But that's for Increments 1 and 2. That's the
24 reason why I have a belief that Increments 1 and 2 are
25 going to be submitted together. And Increment 3 will

1 be separate by the Robinsons.

2 CHAIR McDONALD: That's what we want to
3 hear, Mr. Yee. (general laughter)

4 COMMISSIONER SCHEUER: Could we release
5 Mr. Funakoshi 'cause we haven't asked him a question
6 in a long time? (general laughter)

7 CHAIR McDONALD: Thank you, Mr. Funakoshi.

8 MR. FUNAKOSHI: Thank you for allowing me
9 to testify out of order.

10 COMMISSIONER SCHEUER: Could we have a
11 recess?

12 COMMISSIONER McDONALD: Sure. 5 minute
13 recess. (recess) We're back on the record.

14 MR. YEE: We took Mr. Funakoshi out of
15 order. He's gone to his meeting. With me today is
16 Katy Mineo from the Office of Planning, one of our
17 newest planners.

18 CHAIR McDONALD: Welcome. Mr. Lim, I
19 believe this is your final witness?

20 MR. LIM: I was going to ask if Mr. Yee
21 wants to call Mr. Teruya.

22 MR. YEE: Oh, no. We can just go back.
23 We're fine (1:15).

24 MR. LIM: We'll call Joanne Noni Toledo
25 Hem, please. And this will be our last witness.

1 JOANNE NONI TOLEDO HEM
2 being first duly sworn to tell the truth, was examined
3 and testified as follows.

4 THE WITNESS: Yes.

5 CHAIR McDONALD: Please proceed.

6 DIRECT EXAMINATION

7 BY MR. LIM:

8 Q Could you please state your full name and
9 business address.

10 A Joanne Noni Toledo Hem, P. O. Box 283007
11 Honolulu, Hawai'i 96828.

12 MR. LIM: For the Commission's benefit
13 Noni's resumé is filed as Petitioner's Exhibit 31.
14 And her written direct testimony is Exhibit 34H.

15 DIRECT TESTIMONY

16 BY MR. LIM:

17 Q Could you please describe the scope of
18 your involvement in the Ho'ohana Project.

19 A Yes. I was retained by Hanwha Q CELLS in
20 March of 2014 to lead the community outreach of
21 efforts for Ho'ohana. And I've worked closely with
22 the team since then.

23 Q Could you please describe for the
24 Commission the community outreach that you did with
25 this Project.

1 A Yes. Ho'ohana has made a number of
2 different meetings and 1-on-1 encounters with members
3 of the community, businesses, neighbors around the
4 Project, to state entities, city and county entities,
5 federal entities and government officials about the
6 solar farm. We approached the community outreach in a
7 very systemic way. Again, we start off with
8 neighbors. We also talk to the landowners.

9 When we were speaking with the different
10 community members we made it a point to ask who else
11 we should talk to to get their recommendations. And
12 all of our conversations grew from there. We had over
13 22 meetings, spoke to over 50 people.

14 And it's important to note that this
15 outreach did represent people and organizations who
16 represent about 7500 homes in the area and almost
17 40,000 residents who are also taxpayers and
18 electricity users.

19 In terms of our presentations we solicited
20 questions, feedback. We talked to members of the
21 surrounding areas such as the Royal Kunia Association,
22 The Village Park Association, Waipahu Neighborhood
23 Board, the Hawai'i Agricultural Research Center, the
24 Royal Kunia Country Club.

25 We've also been in contact with the local

1 farmers, the landowners and the developers of the
2 future planned increments of Royal Kunia Phase 2.

3 We solicited feedback from the members of
4 the State and City executive offices; The House of
5 Representatives and the Senate; Honolulu City and
6 County Council Members as well as the executive
7 office; the Senate Energy and Environmental Chairs,
8 the House Energy and Environmental Protection Chairs;
9 the Department of Business and Economic Development,
10 DBEDT; and the tour, the State Energy Office, the
11 Department of Agriculture, the Departments of Planning
12 and Permitting, and the PUC.

13 It's also important to note that we have
14 had efforts to have very in depth conversations with
15 its current landowners and that the lands had been
16 farmed for the last hundred years in terms of sugar.

17 And that since they were also of Native
18 Hawaiian ancestry we felt confident that we had done a
19 pretty thorough job in speaking with the community.
20 There were no real concerns from the community just
21 questions.

22 I think one of the questions that came up
23 that Cliff Smith had discussed was that rooftop solar
24 was a question. We reassured them that that was not
25 going to be a problem; that this particular Project

1 was not going to interfere with their ability to put
2 rooftop solar on there.

3 They also had questions in terms of would
4 it lower their electricity prices. We indicated that
5 we can't control what the prices are. However, we
6 were confident that we could provide a stable lower
7 cost of electricity to HECO.

8 They also were interested in the
9 viewplanes. So we did do about 9 or 11 view studies,
10 which is entered under Exhibit 14, from various parts
11 of surrounding neighborhoods closely as well as far
12 away about over a mile away is what we looked at.
13 There was no impact. There was a little impact from
14 one street in the northern part.

15 And because there's going to be fencing
16 and because we are going to be planting out some
17 hedging, et cetera, that there was not going to be
18 very much impact in that area. So overall the
19 community does support the Project. They support
20 renewable energy. They support the fact that it could
21 help to lower electricity prices for them.

22 It was also brought to our attention that
23 almost half of the people who live in Waipahu are
24 renters. They will probably never experience the
25 benefits of solar rooftop like the people who owned

1 their homes do.

2 So they're in very much support of this
3 type of Project because it could help to lower the
4 electricity prices for people who are disadvantaged.

5 The other thing that we did was we asked
6 for any letters of support. We also obtained letters
7 of support from Senator Gabbard, Senator Hidani, Blue
8 Planet Foundation and the Royal Kunia Country Club who
9 is a neighbor, a very close neighbor.

10 We spoke to the local farmers in the area.
11 They all do support the Project. A lot of the
12 comments that we got from the neighbors as well as the
13 farmers, was that they support the Project because of
14 the added security that they felt it could bring
15 because there's a lot of theft and vagrants in the
16 area. So they did support that.

17 And I did also want to note that the PUC
18 has said publicly that they do support the integration
19 of additional utility scale PV and other renewable
20 energy projects.

21 Q Noni, with regard to the surrounding Ag
22 users that are in and around parcel 52, the Department
23 of Agriculture has recommended initially in some of
24 its discussions with us, that the Project incorporate
25 crops for pollenators and other measures. Could you

1 discuss what the results of your survey with
2 neighboring farmers is?

3 A Yes. There were 3 close neighbors who do
4 farm there. Two of the 3 that we were able to talk to
5 said that they do not want to see pollenators grown on
6 the land. That is for a variety of reasons. But as
7 an example it would introduce foreign species into the
8 area, potentiality alien species. It could detract
9 from their own pollinators that they utilize for their
10 farm areas.

11 Q The Department of Agriculture also
12 recommended raising livestock in and around the solar
13 farm. What is the response from the farmers on that
14 issue?

15 A They were very much against utilizing
16 livestock in the area because they do farm vegetables
17 and fruits. They were afraid of the waste
18 contamination getting onto their property. Also in
19 the agricultural park area I believe there is specific
20 provisions that prevent livestock on that Ag Park. So
21 based on that we are not going to be doing pollenators
22 or looking at putting livestock in there.

23 Q Assuming the Project is approved, what
24 type of community outreach and education is going to
25 on for with relation to the Project?

1 A Well, specifically once the Project
2 development starts we will be sending out community
3 alerts if there's going to be any impacts such as
4 traffic, which we don't anticipate, but we do plan on
5 making sure that we're in constant communication with
6 the community. We also wanted to make a point of
7 providing back to the community.

8 So we did a lot of research and found a
9 program that has been developed by an entity, a
10 non-profit entity called the Maui Economic Development
11 Board. And they have developed a statewide program
12 which trains professional teachers in the DOE on
13 diverse renewable energy curriculum which could be
14 integrated with any of the curriculum that teach such
15 science and language.

16 It incorporates science technology,
17 engineering, math into the curriculum STEM. It's a
18 hands on inquiry-based curriculum. It has been vetted
19 so it meets the curriculum standards of the DOE. The
20 DOE has embraced it. It's entitled the Island Energy
21 Inquiry Program.

22 This curriculum is both place based. It
23 was developed in Hawai'i and also been translated into
24 Native Hawaiian. The program has been applied to
25 schools across the state. And due to the positive

1 response there's actually a wait list of teachers in
2 Waipahu who do want to take this curriculum.

3 So we have committed that should this
4 Project go through that we will sponsor a cohort of
5 teachers to train them as well as to help mentor them
6 throughout their career. They touch about a thousand
7 students each year. So it would be a wonderful
8 program to teach the students about renewable energy.

9 And we're also able to provide some hands
10 on like PV panels, small windmills so the students can
11 touch and feel and understand the impact of that. So
12 the program is also very popular in that the --
13 actually the Department of Defense is looking at
14 taking this program developed here in Hawai'i out to
15 Asia and sharing it with Asian countries.

16 MR. LIM: No further questions. Thank
17 you.

18 CHAIR McDONALD: County, any cross?

19 MR. LEWALLEN: No questions thank you.

20 CHAIR McDONALD: Mr. Wong?

21 MR. WONG: No questions.

22 CHAIR McDONALD: Mr. Yee?

23 MR. YEE: No questions.

24 CHAIR McDONALD: Commissioners, any
25 questions? Commissioner Aczon.

1 COMMISSIONER ACZON: You mentioned that
2 you made presentation to the community groups
3 including Waipahu Neighborhood Boards.

4 THE WITNESS: Yes.

5 COMMISSIONER ACZON: Did any of them go on
6 record in any of the position on this one especially
7 the Neighborhood Board?

8 THE WITNESS: No. They did not go on
9 record. We weren't requesting any record. We did get
10 suppositive responses from them. Our main purpose was
11 to inform them of the Project and answer their
12 questions.

13 COMMISSIONER ACZON: Thank you.

14 CHAIR McDONALD: Commissioner Scheuer.

15 COMMISSIONER SCHEUER: Aloha. I heard a
16 quick reference. If I heard you correctly it wasn't
17 in your written testimony. Some of the groups you
18 reached to like the golf course, the homeowners
19 association, some of those members were Native
20 Hawaiians?

21 THE WITNESS: No. I mentioned that the
22 owners of the property that we're on, parcel 52, those
23 owners are of Native Hawaiian descent.

24 COMMISSIONER SCHEUER: Okay. So are you
25 testifying in terms of the extensive possible

1 traditional customary practices in the Petition Area
2 here?

3 THE WITNESS: We did not hear that there
4 were any issues .

5 COMMISSIONER SCHEUER: Sorry. Are you
6 actually -- are you speaking about that *Ka Pa'akai*
7 kind of analysis in what you're presenting to us now?

8 THE WITNESS: No. I'm not qualified for
9 that.

10 COMMISSIONER SCHEUER: Thank you.

11 CHAIR McDONALD: Thank you for your
12 testimony.

13 THE WITNESS: Thank you.

14 MR. LIM: I have just one witness on
15 redirect. That's Mr. Jon Wallenstrom. Just to
16 clarify some of the issues that came up.

17 CHAIR McDONALD: I just want to remind
18 you, Mr. Wallenstrom, you're still under oath.

19 THE WITNESS: Okay.

20 REDIRECT EXAMINATION

21 BY MR. LIM:

22 Q Thank you, Jon. Just going back to some
23 of the testimony previously. At one point in your
24 testimony on direct you had committed to comply with
25 all recommendations of all your consultants' reports.

1 And I know we discussed that over the lunch recess.

2 And you have a clarification to that.

3 A I do. We rely on our consultants and work
4 with our consultants and use their advice. But their
5 reports were not created in a manner where one could
6 comply with their recommendations. Because as an
7 example you could take every single one of the.

8 But as an example if we're looking at
9 different ways to interconnect and looking at
10 different ways to treat the land, et cetera, we would
11 be given a set of options. And those options would
12 be: "Do A,B or C" All of which would be acceptable,
13 but not the sort of thing that one could follow
14 verbatim. There's -- they weren't created for that
15 purpose.

16 Q Would you instead commit to comply with
17 all conditions imposed by the Commission in this
18 docket?

19 A Yes.

20 Q There was not a question to you but we
21 heard a question for another witness that talked about
22 the prospect of committing to no further landfilling
23 upon decommissioning of the project. What's your
24 thoughts on that?

25 A I think, so Forest City and Hanwha Q

1 CELLS -- but I can speak most directly of Forest City,
2 has received national recognition for our recycling
3 programs, for our stewardship of the environment both
4 with our military base and Stapleton Airport which is
5 one of our larger developments. We're actually the
6 largest recycler in the world because we're recycling
7 largely runways. We use it for base coarse and that
8 sort of thing.

9 This is a very benign use. Ho'ohana --
10 Back to Ho'ohana is a very benign use. There aren't
11 a lot of foundations. There are some foundations for
12 some outbuildings. The PV panels themselves are kinda
13 driven into the ground. The materials are largely
14 wires, which we all know have an after-market value.
15 Fortunately or unfortunately we've seen issues on that
16 front. Aluminum and other things.

17 But to say that we wouldn't go to the
18 landfill is impractical, not realistic. And in some
19 cases, quite frankly, not desirable. There are times
20 where you might have something in the ground and it
21 would be better environmentally just to abandon it in
22 place because it's 5 feet below the ground.

23 Rather than dig it all up it's a concrete
24 thing, it might be better to leave it in there than to
25 take it out.

1 So I don't think I was ever asked that
2 question. But that type of a discussion is an
3 important one to have and to understand. But we
4 couldn't say we won't take things to the landfill.

5 MR. LIM: I have no further questions.

6 CHAIR McDONALD: Any cross, County?

7 MR. LEWALLEN: No further questions.

8 MR. WONG: No questions.

9 CHAIR McDONALD: Mr. Yee?

10 MR. YEE: Yes. (slowly spoken)

11 RECROSS EXAMINATION

12 BY MR. YEE:

13 Q Mr. Wallenstrom, you're making my life
14 hard. (general laughter) In cases where there are
15 alternatives given to you by your consultants, will
16 you be taking one of the recommendations? Or are you
17 saying you might disregard all of them?

18 A No. We paid too much money to those guys
19 to disregard them (Laughter). No. We will, we will
20 follow -- we'd follow the recommendations of our
21 consultants. But the issue is the reports weren't
22 created in a manner that that's a tough question for
23 me to answer.

24 And what is the recommendation, what is
25 not in the body of a 200-page report. We will be, we

1 will be following the recommendations of our
2 consultants. Gosh, I don't know Bryan, that's hard to
3 answer. I don't know if there's any language that I
4 can -- we can work -- I'm agreeing to this in
5 principle. But the specifics of the language just
6 doesn't work perfectly.

7 Q Mr. Overton testified that there will be
8 no hazardous chemicals on the site. Is that a
9 representation that you'll abide with?

10 A Yes. Yes. We will -- and with *that*, I
11 kind of hate to do this because with Kapolei as an
12 example, we just started this large apartment project.
13 And we have to give representations to our bank as an
14 example. They'll say, "You will not bring hazardous
15 substances on site." Is oil a hazardous substance?
16 Is gasoline a hazardous substance?

17 So we created this long list of things
18 that if we paint that is -- if it's handled
19 inappropriately it *is* a hazardous substance.

20 So we will, we will, we will work
21 appropriately or follow the law and the rules. But we
22 have no intention of misusing those substances. But
23 we will be bringing oil and gasoline and not so much
24 paint with this one but those could be hazardous
25 substances if handled improperly which we will be

1 using on the site.

2 Q So if the statement was "No hazardous
3 chemicals will be used as part of the proposed solar
4 farm," is that an incorrect statement?

5 A Probably technically not perfect. Use
6 gasoline as an example.

7 Q I guess you would have lead batteries.

8 A Yeah.

9 Q Let me give you my dilemma and see if
10 you -- if I can avoid it I want to avoid going through
11 every single piece of testimony and going over every
12 single recommendation I see in there and asking you
13 whether this is something you agree with. I think that
14 will take us through next year.

15 A Right.

16 Q To the extent your consultants made
17 recommendations are you going to comply with those
18 recommendations? I mean I understand you're saying
19 sometimes they don't make recommendations at all. But
20 if they *did* make a recommendation will you comply with
21 those recommendations?

22 A Well, to the extent that a consultant made
23 a recommendation that we sure would rather follow the
24 conditions imposed by the Commission, kind of back to
25 what Steve had said. But to the extent a consultant

1 made a recommendation in the conclusion of the report
2 that was, that was I think to the extent a consultant
3 made a recommendation as their conclusion in that
4 report we would follow that recommendation. 'Cause
5 there's -- usually when there's a consultant report,
6 you know, there'd be a, say, an ES.

7 An Environmental Assessment not an EIS,
8 but just Phase 1. It's a 200-page document. Then
9 there's a conclusion. The summary will say you've got
10 to do that, that, that. Those are the sorts of things
11 that we would -- because that's the way, that's the
12 intent of the report. That's the way those reports
13 are set up.

14 Q You testified in the Kamakana case before
15 the Land Use Commission, is that right?

16 A I di.

17 Q Do you remember me asking you whether you
18 would comply with the recommendations of your
19 consultants and either perform those recommendations
20 or something equivalent or better?

21 A I don't. I imagine you did. It was 5
22 years ago.

23 Q Do you know why you would have been able
24 to same yes in that case and not here?

25 A Did I say "yeah"?

1 Q You don't remember.

2 A I don't remember. It was 5 years ago.
3 Probably I wasn't as smart as I am now. I'm less
4 smart now.

5 Q Well, I mean you've agreed to comply in
6 substantial compliance with the representations you
7 made to the Commission.

8 A Yeah.

9 Q So... well... could I have 2 minutes to
10 review more closely? I was not aware of this,
11 redirect?

12 MR. LIM: Let me ask a clarifying question
13 and maybe that might help Bryan through this.

14 Q Jon, are you willing to comply with all
15 applicable governmental regulations in the development
16 and decommissioning of the solar farm on parcel 52?

17 A Yes.

18 CHAIR McDONALD: Mr. Yee, why don't you
19 review what you need to review. I'm going to ask the
20 Commissioners at this point if they have any questions
21 for Mr. Wallenstrom. Commissioner Wong.

22 COMMISSIONER WONG: I have a question
23 sir. You said you'd try to make the land whole after
24 you leave, correct?

25 THE WITNESS: Yes.

1 COMMISSIONER WONG: But let's say -- you
2 said something about a cement or something.

3 THE WITNESS: Well, if you're putting in
4 -- this was used as an example. Actually I can't
5 think of any place where we would actually do this.
6 But with some of the wires that -- not the big
7 overhead wires, but some of the wire that connect
8 panels or strings, those will be buried in the ground
9 3 or 4 feet below.

10 We have an obligation to the Robinsons.
11 We have an obligation to HECO as well in our Power
12 Purchase Agreement to be good stewards of the land and
13 do the right thing.

14 There are times -- and again this is -- we
15 have been recognized by the King of Sweden for things
16 that we've done. We're really environmentally
17 conscious. But there are times that you don't dig it
18 back up. It's 4 feet below the ground. And you leave
19 something there. If it's a piece of concrete that's
20 4 feet below the ground it's a rock. And you
21 shouldn't dig it up and say we're going to take
22 everything away that we left there. So that's all I
23 was referencing.

24 COMMISSIONER WONG: So I have a question.
25 I guess Mr. Smith said there's going to be a septic

1 tank and some other issues. What would happen to
2 those, the tank and all that? Would you pull it up?
3 Or would you leave it there for Robinson to take care
4 of when they take over the land?

5 THE WITNESS: We have an obligation to the
6 Robinsons to leave it in a state that would be
7 acceptable to them. So as an example, a septic tank
8 if properly -- it's a great question. It's probably
9 the most provocative of them. But a septic tank, if
10 properly maintained is terrific and it keeps working.
11 If they can use it then they should.

12 If you dig it up that's not a good thing.
13 You shouldn't. And it sure as heck is going to go to
14 a landfill or somethin' else, right? You can't do
15 anything else with it. It's a great example because
16 it shows there has to be some practicality to that
17 kind of condition.

18 COMMISSIONER WONG: I just was wondering
19 because there is some sort of Master Plan out there
20 that they may want to build housing in the future or
21 something else.

22 THE WITNESS: If I'm looking at a site
23 and, believe me, you find things a lot worse than a
24 septic tank. If I'm looking at a site and that septic
25 tanks -- using this example, is under a place where I

1 need to put a foundation for a home, I'm going to dig
2 it up and go forward because that's part of the
3 economics of the subsequent transaction.

4 COMMISSIONER WONG: Thank you. Mr. Yee,
5 is that enough time?

6 MR. YEE: Yes. I think what we have
7 decided is that during the drafting of the D&O we will
8 go through the documents. We will identify the
9 representations. And Ho'ohana can either agree to
10 that that's a representation or it's not, we can fight
11 it out on the specifics later.

12 So I don't need to ask any more questions
13 of Mr. Wallenstrom at this time.

14 THE WITNESS: Thank you.

15 MR. LIM: The only reason why we asked the
16 question, Mr. Chairman, is because there are numerous
17 recommendations in these. I just didn't want my
18 client to commit to comply with all of them. And I
19 think we're going to end up in the same place unless
20 you had a specific representation you wanted to make.

21 MR. YEE: You know, at this time I don't
22 think it's going to be useful to identify it. We'll
23 just work on it between the parties. If we can't
24 agree we'll submit it up to the LUC.

25 CHAIR McDONALD: Thank you. Any further

1 redirect, Mr. Lim?

2 MR. LIM: No further redirect.

3 CHAIR McDONALD: Commissioners, any
4 questions for Mr. Wallenstrom? (no reply) Thank you
5 again.

6 THE WITNESS: Thank you very much.

7 MR. LIM: We have no further witnesses,
8 Mr. Chairman so we rest.

9 CHAIR McDONALD: Thank you, Mr. Lim.
10 Mr. Yee, I believe this is your last witness?

11 MR. YEE: Correct. We have one more
12 witness Mr. Randy Teruya.

13 MR. TERUYA: Good afternoon, Chair
14 McDonald, Members of the Commission. My name is Randy
15 Teruya.

16 RANDY TERUYA
17 being first duly sworn to tell the truth, was examined
18 and testified as follows:

19 THE WITNESS: That is correct.

20 CHAIR McDONALD: Thank you, Mr. Teruya.

21 DIRECT EXAMINATION

22 BY MR. YEE:

23 Q Could you please state your name and
24 position?

25 A My name is Randy Teruya. I'm with the

1 State Department of Agriculture. I'm the Agricultural
2 Asset Manager.

3 Q Could you please give the Department of
4 Agriculture's position in this case.

5 A The Agriculture Department supports the
6 solar farm. However, we are eager to see the
7 conditions of the 1996 Order complied with. We find
8 that this is an opportunity for the department to
9 facilitate the compliance of the conditions as well as
10 the development of the State agricultural park.

11 Q Why don't you give me the entire
12 statement.

13 I think: Well, I think Mr. Funakoshi gave
14 you pretty much the background of the Ag Park, the
15 overall development. At this point the department
16 views the Royal Kunia agricultural park as, you know,
17 one of its premiere properties to be developed, to
18 really get the agricultural industry involved.

19 Hopefully this may spur additional
20 interest by the younger generation. We find that many
21 of our oldtime farmers are retiring. The new
22 generation is having a real difficult time seeing the
23 benefits to the agricultural industry.

24 This Ag Park is going to be a big help in
25 convincing the younger generation that agriculture can

1 be economically feasible and profitable. This is
2 prime agricultural lands.

3 The Department has envisioned in the
4 development of this Ag park associated housing along
5 with farm lots. So this is going to be a really
6 complete agricultural park that will service not only
7 the industry but the surrounding community and
8 hopefully again spur a lot of interest in agriculture
9 again in the state of Hawai'i.

10 Q I believe the question's been asked about
11 the appropriations. What has the Department of
12 Agriculture done to develop so far the agricultural
13 park and what are its plans?

14 A I have some information. In 2007 the
15 Department of Agriculture secured the initial \$250,000
16 appropriation through Act 213. And monies were
17 allotted in January of 2008 for the initial planning
18 and Environmental Assessment of the state agricultural
19 park.

20 In 2011 under Act 164 the department
21 received an appropriation of \$1 million. \$700,000 was
22 initially appropriated for the design of the
23 agricultural park. Just recently Governor Abercrombie
24 released \$300,000 for supplemental design for the
25 agricultural park.

1 In 2013 under Act 134 the department
2 secured another appropriation for \$2 and-a-half
3 million dollars. This is to supplement the
4 construction of the interior subdivision of the
5 agricultural park. The monies have not been released
6 yet. It will lapse in June of 2016. So the
7 department intends to continue soliciting the
8 legislature for additional funding.

9 But it becomes very difficult when we're
10 not able to show that the Phase 2 development hasn't
11 progressed, especially where the utility
12 infrastructure is needed.

13 So at this point we are proceeding with
14 our plans for the interior design and construction of
15 the agricultural park. But we are relying heavily on
16 the landowners to comply with the balance of Condition
17 19.

18 Q So you said that you are proceeding with
19 design. Have you procured someone to do that design?

20 A Yes. Currently RM Towill is contracted to
21 do the interior design work.

22 Q And do you have an estimated completion
23 date?

24 A The estimated completion date is December
25 2016.

1 Q OP Exhibit 12 I believe lays out a history
2 of the matter with the agricultural park. Did you
3 draft OP Exhibit 12?

4 A Yes, I did.

5 Q What does OP Exhibit 12 generally discuss?
6 You don't have to go through the details. What does
7 it general go through?

8 A It generally discusses the chronology of
9 this matter relating to the Department of Agriculture
10 and Condition 19. It goes through the years, each, I
11 guess, significant event that involved the Department
12 of Ag.

13 Q So one of the things that happened wa that
14 there was an MOU which established deadlines for the
15 construction of the offsite infrastructure, is that
16 correct?

17 A That is correct.

18 Q Does that MOU describe what the offsite
19 infrastructure would be?

20 A The offsite infrastructure was described
21 in the MOU, the original MOU, of 1993 to include
22 potable water, non-potable water, electricity, sewer
23 and telecommunications.

24 Q And were those deadlines extended?

25 A Yes.

1 Q Do you know what the latest deadlines
2 were?

3 A The latest deadline expired December 31st,
4 2013.

5 Q What was that deadline to do?

6 A That deadline was for the summation of a
7 Master Plan, a preliminary Master Plan.

8 Q For the infrastructure?

9 A For the entire development.

10 Q Okay. Was there also a construction
11 completion date in the MOU?

12 A I believe there were.

13 Q What was the last construction completion
14 date in the MOU?

15 A I'm not real sure. I believe it was
16 within 12 months of the D&O.

17 Q Do you remember if that was -- do you
18 remember if the final deadline or the latest deadline
19 was in 2011?

20 A Yeah, the extended deadlines, yes.

21 Q And did all those deadlines pass without
22 completion?

23 A That is correct.

24 Q Has the Department of Agriculture looked
25 at the proposed stipulation that the Office of

1 Planning submitted as OP Exhibit 14?

2 A Yes, we have.

3 Q One of the things is to have an amendment
4 to the MOU to provide for offsite infrastructure to
5 complete it by December 31st, 2016. Is that
6 acceptable to the Department of Agriculture?

7 A That is acceptable.

8 Q Can you just explain why the end of 2016
9 would be all right with the Department of Agriculture?

10 A Yes.

11 Q With respect to how it coordinates with
12 your timetable and schedule.

13 A It certainly does. Again this is why it's
14 so important for the department. We are trying to
15 meet a deadline. This Project has been on the books
16 for over 20 years. It is really urgent, actually, for
17 the industry to get something going to at least start
18 the ball rolling on food sustainability in the state
19 of Hawai'i. I understand renewable energy. I believe
20 they go hand-in-hand.

21 So, you know, the Department really -- we
22 support the renewable energy efforts. However, we
23 need to have agriculture progress at the same time at
24 the same rate.

25 MR. YEE: Thank you. I have no further

1 questions.

2 CHAIR McDONALD: Mr. Lim, any cross?

3 MR. LIM: Yes.

4 CROSS-EXAMINATION

5 BY MR. LIM:

6 Q Mr. Teruya, you've been involved in the
7 Memorandum of Understanding relating to the state's
8 agricultural park from the beginning?

9 A No. Since 1996.

10 Q In March 30th of 1993 when the Memorandum
11 of Understanding was first executed by the State
12 Department of Agriculture and Halekua Development
13 Corporation, correct? (outside noise interruption)
14 Continuing on. I'm going through history. On March 2
15 of 2007 and the amendment and restatement of the
16 Memorandum of Understanding the parties were Halekua
17 Development Corporation and the Department of
18 Agriculture, correct?

19 A That is correct.

20 Q Moving forward looks like the February 19,
21 2009 first amendment to amend and restatement of
22 Memorandum of Understanding. The parties were
23 Halekua-Kunia, LLC and the Department of Agriculture,
24 correct?

25 A That is correct.

1 Q The last one, that we're aware of anyway,
2 was the September 20, 2012 second amendment to
3 amendment to restatement of Memorandum of
4 Understanding. Parties to that were CanPartners, for
5 Royal Kunia Property, LLC and the Department of
6 Agriculture, correct?

7 A That is correct.

8 Q Okay. You said that you were, on behalf
9 of Department of Agriculture, in agreement with the
10 new conditions applicable solely to the solar farm on
11 parcel 52 that is contained in the stipulation that's
12 been entered as Office of Planning Exhibit No. 14.

13 A Yes.

14 Q Okay. You also understand that the
15 non-potable waterline that will be provided by
16 Ho'ohana on or before December 13, 2016 would be
17 applicable only upon development of the solar farm use
18 on parcel 52, correct?

19 A Yes.

20 MR. LIM: No further questions.

21 CHAIR McDONALD: County?

22 MR. LEWALLEN: No questions thank you.

23 CHAIR McDONALD: Mr. Wong?

24 MR. WONG: No questions.

25 CHAIR McDONALD: Any redirect, Mr. Yee?

1 MR. YEE: No.

2 CHAIR McDONALD: Commissioners, any
3 questions for Mr. Teruya? Commissioner Hiranaga.

4 COMMISSIONER HIRANAGA: Mr. Chair, just
5 for clarification. Mr. Teruya you stated that the
6 State appropriated funds of 2.5 million lapses in June
7 of 2016?

8 THE WITNESS: Yes.

9 COMMISSIONER HIRANAGA: I guess because
10 the deadline for completion of the offsite
11 infrastructure is December 31st, 2016 as long as the
12 Project -- well, so would you be designing
13 concurrently with the design or designing of the
14 onsite infrastructure currently with the design of the
15 offsite infrastructure?

16 THE WITNESS: Yes. In fact RM Towill who
17 the Department has contracted, is currently working on
18 the design, the interior -- of the Ag Park including
19 the interior roadways and the infrastructure. So that
20 design and planning is in the works right now.

21 COMMISSIONER HIRANAGA: I thought I read
22 somewhere that it was difficult to design the on-site
23 infrastructure improvements until the offsite
24 infrastructure improvements were designed because you
25 wouldn't know where the hookups are.

1 A The hookups, again, we, through the
2 various discussions and meetings we've had over the
3 last several weeks. We have been able to at least
4 come to agreement as to a general area. Basically
5 narrowed it down to an area within 50 to a hundred
6 feet in width.

7 So with that information our consultants
8 can continue to do the interior design work and make
9 certain assumptions. With the completion of the
10 Master Plan and approval -- review and approval of
11 such plan the Department believes that it will be able
12 to isolate the exact location soon.

13 COMMISSIONER HIRANAGA: One more question.
14 I remember reading, and you just mentioned that the
15 intent is for farm dwellings to be provided on those
16 properties. Just wondering, maybe the lot sizes are 5
17 or 10 acres.

18 THE WITNESS: The lot sizes will range
19 from 5 to approximately 15 acres.

20 COMMISSIONER HIRANAGA: So, and I'm not a
21 farmer but for diversified Ag can someone actually
22 sustain one's self by generating revenue of a 5-acre
23 lot with a dwelling on it?

24 THE WITNESS: The dwelling would not be
25 situated on the 5-acre lot. The dwellings were

1 envisioned to be more cluster housing. So they would
2 be located one end of the 150-acre lot. Then within
3 the farm lots themselves, as they are subdivided,
4 would not, would have other restrictions. In other
5 words, there'd be no allowance for building any kind
6 of structures on those, on those lots. The lots are
7 going to be strictly for growing agriculture
8 commodities.

9 COMMISSIONER HIRANAGA: Is that a
10 reasonable size, though, 5-acre lot for someone to
11 farm?

12 THE WITNESS: Absolutely. We have --

13 COMMISSIONER HIRANAGA: It wouldn't be
14 hobby farming.

15 THE WITNESS: No.

16 COMMISSIONER HIRANAGA: Seriously.

17 THE WITNESS: No. I have farmers in
18 Waimanalo. They both reside and farm on 5-acre or
19 6-acre lots. They generate in excess of 6 figures a
20 year.

21 COMMISSIONER HIRANAGA: Okay. Thank you.

22 CHAIR McDONALD: Any further questions
23 for Mr. Teruya, Commissioners? Seeing none -- oh,
24 Commissioner Mahi. I'm sorry.

25 COMMISSIONER MAHI: I've a more innocent

1 question. (Laughter). In my mind I'm trying to
2 imagine. I think I just turned a little bit after
3 Ken's questions about the agricultural park. It's
4 like these series of 5-acre farms. Is that what it
5 is, the agricultural park?

6 THE WITNESS: Yes. Okay. State of
7 Hawai'i in 1989 through the Department of Land and
8 Natural Resources initiated a state Agricultural Parks
9 program under Chapter 166 Hawaii Revised Statutes.
10 The program was designed or envisioned to be an
11 incubator program starting out with smaller lots no
12 larger than 15 or 20 acres, and giving the small
13 farmer around opportunity to establish themselves in
14 the industry.

15 After that, you know, these were based on
16 35 to 45-year leases. So these farmers had an
17 opportunity to really not rush through anything, but
18 be able to develop their farms and their commodities
19 over a period of time. Because of the way land
20 structuring, the lease structuring was set up they
21 were able to qualify for loans, you know, to help them
22 develop their farms.

23 The Department also has recently through
24 Act 90 of Session Laws 2003, established a
25 non--agricultural parks land program. The major

1 difference is that the agricultural parks program are
2 made of up of contiguous lots generally in one
3 location. The non-agricultural parklands program are
4 agriculturally zoned lots throughout the state, but
5 not necessarily contiguous. We operate both programs.

6 COMMISSIONER MAHI: Was that like
7 Pu'uanahulu? You know what I'm talking about.

8 THE WITNESS: Yeah.

9 COMMISSIONER MAHI: Is that the same
10 situation?

11 THE WITNESS: Similar.

12 CHAIR McDONALD: Thank you, Commissioner
13 Mahi for that. (laughing). Okay. Thank you,
14 Mr. Teruya for your testimony.

15 THE WITNESS: Thank you, Commissioners.

16 MR. YEE: Commissioner, just to let you
17 know the Office of Planning Exhibit 13 does set forth
18 a conceptual site plan for the Agricultural Park if
19 you want to get a better visual picture of what the
20 concept is supposed to looking like. And with that
21 Mr. Teruya was our last witness. And the Office of
22 Planning would rest.

23 CHAIR McDONALD: We have about 30 or so
24 minutes before one of our Commissioners needs to take
25 off for the airport. So do you want to punch through

1 it? Anyway, okay, Mr. Lewallen, would you like to
2 make a presentation?

3 MR. LEWALLEN: DPP has no witnesses, thank
4 you.

5 CHAIR McDONALD: Mr. Wong?

6 MR. WONG: No witnesses here.

7 CHAIR McDONALD: Okay. Commissioners,
8 before we close the evidentiary portion is there any
9 further discussion on this matter before us today?
10 Commissioner Hiranaga.

11 COMMISSIONER HIRANAGA: So I'm still --
12 have some questions about Exhibit 14 which is the
13 stipulation that was provided to us earlier. So if
14 you look at Condition A1 third sentence or end of
15 second sentence, "Petition Area shall finalize and
16 comply with the amendment to the Memorandum of
17 Understanding." So how does that relate to the
18 12/31/2016 deadline for completion of the offsite
19 infrastructure?

20 If they have to comply within 6 months of
21 the issuance of the Commission's Order it doesn't seem
22 -- how do you comply with something within 6 months
23 when you're given a deadline to complete at the end of
24 2016?

25 MR. YEE: I believe the sentence is

1 intended to mean within 6 months you finalize the
2 document and you then *comply* with the document. So
3 you don't -- the compliance doesn't end in 6 months.
4 The compliance really sort of starts. It's after you
5 finalize.

6 COMMISSIONER HIRANAGA: Okay.

7 MR. LIM: That's our understanding also on
8 the stipulation.

9 COMMISSIONER HIRANAGA: So I'm looking at
10 this document. The signature page has Ho'ohana
11 Lessees and the State of Hawai'i Office of Planning.
12 DPP is refusing to sign this document. I'm wondering
13 why none of the landowners have a signature line here.
14 You have HRT here. Are they refusing to sign? Don't
15 know if they wanna sign? Won't sign?

16 You had communications with Canpartners on
17 November 10th, so apparently they'd been observing
18 this process. They don't want to be on the signature
19 page.

20 Then Robinson Family, the landowner for
21 which the property they're leasing to Ho'ohana they
22 don't want to be on the signature page either.

23 So I'm just concerned if this document is
24 actually, if these landowners in the future come back
25 and say, "We're not bound by this agreement." Is this

1 Decision and Order reversible and appealable? I guess
2 everything's appealable.

3 MR. YEE: From my perspective the purpose
4 of the stipulation is not to bind the landowners.
5 It's just to demonstrate to you that there was an
6 agreement between two of the parties, and to give you
7 actual language so you've got something in front of
8 you to look at.

9 The landowners all had an opportunity --
10 one did -- have an opportunity to participate. They
11 all got notice. They all got the documents. They
12 decided not to show up. If they decide not to show up
13 that's their (inaudible). The decision and Order for
14 the Land Use Commission affects the entire Petition
15 Area. They're going to be bound by whatever it is you
16 decide.

17 So if you decide to adopt the conditions
18 that we recommended, they're going to be bound by it.
19 And if they come in to you later -- well, anyone can
20 always moved to amend. But they cannot simply
21 complain that they don't like it. Because they should
22 have been here if they didn't. They were all aware.
23 They're all aware of what the proposals were because
24 we were -- we had a lot of discussions.

25 MR. LIM: Commissioner Hiragana, perhaps

1 I could add something on your issue. I can represent
2 to the Commission that with the exception of the RKES
3 Group who never responded, everybody else was
4 responding back and forth on the specific language.
5 That was a highly negotiated document. So the other
6 parties who haven't signed here chose not to sign.

7 I think that's how this has been processed
8 was: We'll go forward and you guys object if you want
9 to. If you don't object then we'll keep moving
10 forward. That's kind of how it turned out. It was a
11 little difficult more so than most petitions because
12 we had all these different property owners with
13 different interests.

14 But I think I can represent to you that
15 for everybody, except RKES, that everybody is, I can
16 say, having no objections to the proposed stipulation.

17 CHAIR McDONALD: Commissioner Hiranaga,
18 we can make -- it's up to us far as what conditions we
19 want to impose. We need to be sure that the Findings
20 of Facts can defend our decisions to a certain degree
21 the conditions we impose. But for me personally I
22 understand where you're coming from.

23 For me personally I do have issues with
24 the stipulated conditions noted A1, 2 and 3; the
25 discussions between and representations made between

1 the Office of Planning and the successor Petitioner.

2 However, I have some difficulty when
3 there's no presentation, no response from the other
4 property owners within the entire Petition Area. So I
5 mean that's a decision we need to make. Again, we can
6 impose whatever conditions we want. We can accept the
7 stipulated conditions or not. But I think it's
8 important the findings of fact reflect the decisions
9 or hopefully we make today.

10 MR. LIM: Mr. Chairman, we have two of the
11 property owners here, representatives. And maybe we
12 could have them, if they're willing to come up and
13 make a commitment that they're -- at least they have
14 no objections. I don't think they have to say they
15 approve the conditions. But at least they have no
16 objections with the Commission's conditions if that
17 would help you.

18 COMMISSIONER HIRANAGA: Yes. In fact I
19 was going to ask HRT for their verbal opinion. But
20 you state that there's another landowner.

21 MR. LIM: The Robinson Kunia land
22 representative is back there. So he's willing to come
23 up.

24 CHAIR McDONALD: I guess before we have
25 the Robinson ownership. HRT, Mr. Wong, as far as the

1 proposed stipulated conditions made as part of OP's
2 Exhibit No. 14, do you accept or do you object?

3 MR. WONG: As far as just the conditions
4 we would have no objection to them as I indicated
5 before. Our initial hesitation with this stipulation
6 was there were was some questions that we had. But
7 based upon the presentation, representations by
8 Mr. Yee, those have sort of answered our concerns.
9 So, therefore, based upon the representations by
10 Mr. Yee as to OP we would not be objecting to these
11 conditions.

12 CHAIR McDONALD: Mr. Lim, could you please
13 call, I guess, your public witness?

14 MR. LIM: I'd like to call Allen Zotaki.

15 THE WITNESS: I've been elected.

16 ALLEN ZOTAKI
17 being first duly sworn to tell the truth, was examined
18 and testified as follows:

19 THE WITNESS: I do.

20 CHAIR McDONALD: Please state your name,
21 your address and proceed. Allen Zotaki. I'm one of
22 three trustees for the Mark Robinson Trust and
23 representative of RKL, LLC. Our address is 1100
24 Alakea Street, sixth floor.

25 DIRECT EXAMINATION

1 BY MR. LIM:

2 Q Mr. Zotaki, could you please explain to
3 the Commission your involvement in the Robinson Kunia
4 Land Trust, the landowner of parcel 52.

5 A I'm one of 3 trustees of the Mark Robinson
6 Trust who are one of the managers of RKL, LLC. There
7 are 3 managers.

8 Q About how long has the Robinson Family
9 owned the real property in question?

10 A I believe they purchased the property
11 shortly after the *Great Mahele* about 1860 or something
12 in that area.

13 Q Are you familiar with the property over
14 the years?

15 A Yes. Yes, I have.

16 Q Have you had any occasion to witness or
17 hear about requests for exercise of traditional and
18 customary Native Hawaiian rights on the property?

19 A The property has been in sugarcane for
20 about a hundred years. Before that I believe it was
21 in ranching. We had no indication of Hawaiian
22 gathering or cultural practices on the property. It's
23 been in sugar.

24 Q I'll show you what's been marked as Office
25 of Planning's Exhibit No. 14. This is the stipulation

1 that we've been talking about just now. I'll direct
2 you to Pages 4 and 5 of that stipulation with regards
3 to the conditions. I guess the question is does the
4 Robinson Kunia Land, LLC agree with those conditions
5 that are being proposed by Ho'ohana Solar 1, LLC and
6 the State Office of Planning?

7 A We have no objection.

8 MR. LIM: Okay. Thank you. No further
9 questions.

10 CHAIR McDONALD: Parties, any questions?
11 Commissioners? Thank you, sir.

12 MR. LIM: The last owner that we haven't
13 heard from, and we won't hear from, because he
14 declined to appear, is the Canpartners 4 Realty
15 owners. They're the ones that are the developer of
16 Increments 1 and 2. I can represent to you that I'm
17 reading from a November 20th e-mail from the
18 Canpartners Attorney Wyeth Matsubara.

19 It says -- it's an e-mail to Mr. Wong's
20 partner Del Wong. This is from Wyeth Matsubara
21 saying, "Del, nice speaking with you today. Yes, your
22 understanding is correct. And we're confirming that
23 your understanding that Canpartners will undertake the
24 obligations set forth in the proposed stipulation
25 section A new conditions applicable to the Petition

1 Area 1, 2 and 3 as they relate to Increments 1 and 2."

2 So that's as close as we're gonna get them
3 to come testify or appear at this hearing. But I will
4 represent to you that they have been actively involved
5 in discussions with Mr. Yee and with us. And they've
6 reviewed and have -- I can represent to you that at
7 least I believe they have no objections to the
8 imposition of the conditions.

9 COMMISSIONER HIRANAGA: Mr. Chair?

10 CHAIR McDONALD: Commissioner Hiragana.

11 COMMISSIONER HIRANAGA: Could you ask
12 Mr. Lim to reread that email again, please.

13 MR. LIM: I'm going to start with the top.
14 It says --

15 CHAIR McDONALD: Slowly.

16 MR. LIM: It says, "Email from Wyeth
17 Matsubara to Del Wong, Onaona Thoene of my office and
18 Brian Yee of the Office of Planning and also Rodney
19 Funakoshi with cc's to myself, Reuben Wong, Curtis
20 Tabata, who's Wyeth's partner, and Miles Furutani who
21 is the Canpartners principal."

22 "Del, nice speaking with you today. Yes,
23 your understanding is correct and we are confirming
24 your understanding that Canpartners will undertake the
25 obligations set forth in the proposed stipulation

1 section A: New conditions applicable to the Petition
2 Area 1, 2 and 3 as they relate to Increments 1 and 2.
3 We're also fine with your proposed language and the
4 change you made with the stipulation."

5 So this is kind of the result of many
6 versions that were negotiated over the past week or
7 so.

8 COMMISSIONER HIRANAGA: Mr. Chair, I just
9 have one last question. Being relatively new to this
10 process so our counsel, our attorney general and the
11 Office of Planning also reviewed this document and
12 finds it appropriate?

13 CHAIR McDONALD: Which document? OP
14 Exhibit 14? I think with regards to discussion with
15 our attorney general regarding our roles,
16 responsibilities and liabilities I'll entertain a
17 motion for executive session at this time, if you
18 would like to discuss our liabilities and
19 responsibilities with our AG.

20 COMMISSIONER HIRANAGA: I just asked if
21 she had a chance to review this and finds it
22 acceptable.

23 MS. ERICKSON: I think that's giving you
24 legal advice and I would recommend that you go into
25 executive session.

1 COMMISSIONER HIRANAGA: So be it. I move
2 to go into executive session.

3 COMMISSIONER AHAKUELO: Second.

4 CHAIR McDONALD: All those in favor?
5 "Aye". Any opposed? The Commission will now go into
6 executive session. If you will please remove
7 yourselves from the room. (3:15 recess.)

8 CHAIR McDONALD: We're back on the record.
9 (3:20). Commissioners, any further discussion on this
10 matter? Seeing none, given that the parties have
11 completed their presentations before the Land Use
12 Commission I declare the evidentiary portion of this
13 motion's proceeding is completed and is now closed.

14 The Chair will now allow each party no
15 more than 15 minutes to present closing arguments in
16 support of its Proposed Decision and Order and/or its
17 exception to those proposed by other parties.

18 The Petitioner may reserve a portion of
19 its time for rebuttal. At the conclusion of oral
20 argument, and after questions from Commissioners, if
21 any, and the answers thereto, the Commission will
22 conduct its formal deliberations on this matter.

23 Mr. Lim, do you have any closing statements to make?

24 MR. LIM: Mr. Chairman, the Successor
25 Petitioner Ho'ohana Solar 1, LLC wishes to thank the

1 Commission for its consideration of our Motion to
2 Amend. We'll waive final argument. I'll reserve for
3 rebuttal, if any.

4 CHAIR McDONALD: County?

5 MR. LEWALLEN: To avoid being redundant
6 I'll just restate or resubmit to what we had stated
7 earlier and that's we support the Project. Thank you.

8 CHAIR McDONALD: Mr. Wong.

9 MR. WONG: The HRT III Hundred Corporation
10 was adequately presented before the Commission. We
11 will be waiving any further final arguments. Thank
12 you.

13 COMMISSIONER McDONALD: Thank you.
14 Mr. Yee.

15 MR. YEE: Office of Planning would waive
16 final argument but would be prepared to answer any
17 questions relating to stipulated conditions.

18 CHAIR McDONALD: Thank you, Mr. Yee.
19 Commissioners, any questions or discussion? Seeing
20 none I just have a statement to make. You know, I
21 very much appreciate the parties coming together at
22 the final hour. It's been a bit frustrating for the
23 Commissioners, but I do agree that we made a lot of
24 progress today and very much appreciate it.

25 Again, and I stated this before, I commend

1 the Applicant for their efforts in attaining or
2 supporting the State's effort in renewable energy.
3 And at the same time, and I gotta say this because
4 I've been on the Commission now 4 years and sat
5 through some contested DBA's. You know the issue of
6 the agricultural park came up. For me that was a bit
7 sensitive because typically developers come to us to
8 put land out of agriculture and into urban
9 designation.

10 So, again, I appreciate you folks working
11 together and coming to some type of agreement to
12 support the state agricultural park. So with that,
13 Commissioners, what's your pleasure on this matter?

14 COMMISSIONER WONG: Chair, I would like to
15 move, make a motion to move to approve this with
16 another condition. That after the life of the solar
17 farm that if any triggers for HRS 343 is hit that they
18 have to do another new HRS, or EA or EIS on this.

19 CHAIR McDONALD: Okay.

20 COMMISSIONER AHAKUELO: Second.

21 CHAIR McDONALD: We have actually a motion
22 by Commissioner Wong, second by Commissioner Ahakuelo.
23 Go ahead, Commissioner Wong.

24 COMMISSIONER WONG: I'd like to go back to
25 it and also include the stipulation that was presented

1 in Exhibit 14.

2 CHAIR McDONALD: Commissioner Ahakuelo,
3 you're in agreement with the friendly amendment?

4 COMMISSIONER AHAKUELO: Yes.

5 CHAIR McDONALD: Thank you.

6 Mr. Orodenker, would you please poll the Commission.
7 I'm sorry. Any discussion? Yeah, go ahead.

8 COMMISSIONER SCHEUER: I will try to make
9 three very brief points knowing we're rushing. Sorry
10 if it's too brief and not necessarily in order of
11 importance. It gives me great pause in terms of the
12 analysis that we have to do in *Ka Pa'akai*. There was
13 only one local kama'aina testimony.

14 What gave me great comfort, however, was
15 in this particular instance with one landowner with a
16 very long history, being able to assert to the
17 Commission that they haven't had any record for access
18 to the property I think gives me some comfort in this
19 case.

20 I just want -- many people have apologized
21 to the Commission for the delays in this. And, yeah,
22 we're volunteers. I just want to acknowledge the
23 staff has worked ridiculously hard to work with the
24 often-changing schedule. They deserve a lot of credit
25 for this going forward.

1 Other than that I echo the Chair's
2 comments. It's a very worthwhile Project.

3 CHAIR McDONALD: Mr. Orodenker, before I
4 have you poll the Commission I need to confirm that
5 you Commissioners are prepared to deliberate on this
6 docket. After I call your name would you please
7 signify with either an aye or a nay that you're
8 prepared to deliberate on this matter. Commissioner
9 Ahakuelo?

10 COMMISSIONER AHAKUELO: Aye.

11 CHAIR McDONALD: Commissioner Aczon?

12 COMMISSIONER ACZON: Aye.

13 CHAIR McDONALD: Commissioner Scheuer?

14 COMMISSIONER SCHEUER: Aye.

15 CHAIR McDONALD: Commissioner Hiranaga?

16 COMMISSIONER HIRANAGA: Aye.

17 CHAIR McDONALD: Commissioner Wong?

18 COMMISSIONER WONG: Aye.

19 CHAIR McDONALD: Commissioner Mahi?

20 COMMISSIONER MAHI: Aye.

21 CHAIR McDONALD: The Chair's also prepared
22 to deliberate on this matter. Seeing that we have a
23 motion on the floor, and if there's any further
24 discussion I'll have the executive officer poll the
25 Commission. Mr. Orodenker.

1 MR. ORODENKER: Thank you, Mr. Chair. The
2 motion is to grant the motion with conditions
3 contained in Exhibit 14 and a condition that after
4 decommissioning Chapter 343 will be adhered to.
5 Commissioner Wong?

6 COMMISSIONER WONG: Aye.

7 MR. ORODENKER: Commissioner Ahakuelo?

8 COMMISSIONER AHAKUELO: Aye.

9 MR. ORODENKER: Commissioner Mahi?

10 COMMISSIONER MAHI: Aye.

11 MR. ORODENKER: Commissioner Scheuer?

12 COMMISSIONER SCHEUER: Aye.

13 MR. ORODENKER: Commissioner Aczon?

14 COMMISSIONER ACZON: Aye.

15 MR. ORODENKER: Commissioner Hiranaga?

16 COMMISSIONER HIRANAGA: Aye.

17 MR. ORODENKER: Commissioner Song is
18 absent. Chair McDonald?

19 CHAIR McDONALD: Aye.

20 MR. ORODENKER: Mr. Chair, the motion
21 passes unanimously.

22 CHAIR McDONALD: Thank you, Mr. Orodenker.
23 So with that I'm going to need the parties to work
24 with the LUC staff on the preparation of the Findings
25 of Fact, Conclusions of Law and the proposed D&O.

1 And, again, I appreciate the parties coming together
2 as well as the staff.

3 Commissioner Scheuer has expressed his
4 gratitude to the staff working diligently long hours
5 in preparing this Commission for the past couple of
6 days. So very much appreciate that. Thank you. We
7 are adjourned. Excuse me. Mr. Lim, you had a
8 statement?

9 MR. LIM: No. I was just thanking the
10 Commission and the staff for their patience with us.
11 And we'll push forward on this Project. Thank you.

12 CHAIR McDONALD: Thank you. Last item of
13 discussion I guess the executive session. We
14 unfortunately ran out of time. We'll reschedule that
15 to a later date. Okay. Hold on. We gotta get
16 through the filing schedule for Mr. Yee's -- hold on.
17 *February* 28th is the date for filing. "February"?
18 Oh, my gosh -- (laughter) *November* 28 for filings,
19 proposed filings to the LUC staff and any responses
20 are on December 5th.

21 MR. LIM: Mr. Chairman, those are the
22 expedited filing deadlines that we would have had to
23 follow had you not taken action today. But since you
24 did take favorable action we don't have to go through
25 the expedited filing. The verbal vote I think is

1 sufficient for us.

2 CHAIR McDONALD: You know what? Mr. Lim,
3 why don't you work with LUC staff on the scheduling of
4 the filings because I was under the impression that we
5 had to kind of get this out really quickly. So if
6 there's no scheduling deadline that you folks are up
7 against, I propose that you folks work directly with
8 staff on the filing dates.

9 MR. LIM: Thank you. I'll confirm with my
10 client to make sure that they're okay that the voice
11 vote is enough for them. Then I'll communicate that
12 with the staff and the parties.

13 CHAIR McDONALD: Great.

14 MR. LIM: Thank you.

15 CHAIR McDONALD: Mr. Yee, you're okay?

16 MR. YEE: Thank you very much.

17 CHAIR McDONALD: Thank you, again, parties
18 and Commissioners. We're adjourned.

19

20 (The proceedings were adjourned at 3:35 p.m.)

21

22 --oo00oo--

23

24

25

C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State of Hawai'i, do hereby certify;

That I was acting as court reporter in the foregoing LUC matters on the 21st day of November 2014;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

That the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matters.

DATED: This _____ day of _____ 2014

HOLLY M. HACKETT, HI CSR #130, RPR #5910
Certified Shorthand Reporter